

REPORT
OF THE
MINISTER OF FOREIGN RELATIONS,
TO THE NOBLES AND REPRESENTATIVES
OF THE HAWAIIAN ISLANDS,
IN LEGISLATIVE COUNCIL ASSEMBLED,
APRIL 1853.

By command of the King, and under the 34th article of the New Constitution granted by His Majesty on the 14th of June last, I lay before you an account of His Majesty's Foreign Relations, subsequent to my last report read to the Legislature, on the 14th of April last.

It pleased the King in His gracious speech to the last legislature, to inform them that His relations with all foreign nations, excepting only France, continued to be of the most friendly character—that he had not heard from the President of the French Republic, on the important matters referred to Him, but that His Majesty's Government continued to protect French citizens and their interests, as they did those of the most favored nation.

Among the most important matters so referred by the King, were the claims for indemnity, which you will find printed at page 165 of the Appendix to my report to the legislature of 1851. From the reference to the Prince President of France were excepted, the claims of the Governor of Oahu, because Admiral de Tromelin himself in a courteous note addressed to the Governor, under the date of the 30th of Aug. 1849 expressed his regret for the injuries done to the Governor's private property, by the French forces, and promised that they would be properly represented to the Government of France—and that of Mr. William Ladd, and other citizens of the United States, claiming \$254,293 for damages against the King's Government, arising *consequentially* from the VIIth article of the Treaty of Laplace, of the 17th of July 1839, because that claim had become a matter of Diplomatic discussion with the Commissioner of the United States, and hinging as it did, and still does, upon the fair, just, and equitable interpretation of the said article, carefully considered in connection with all the other articles, it was held to be unsafe to proceed till after the whole question, with its fresh complications, had been reviewed by the Government of France.

You are not to understand me as conveying the idea that if that

claim should prove to be a just one, the United States Government would enforce it upon France. The Commissioner of the United States in his despatch of 3d of March 1851 (which you will find printed at page 154 of the appendix to my report of 1851) distinctly stated that *Messrs. Ladd & Co. can make no demands on the French Government for violation of a Treaty, and that they only looked to the Hawaiian Government under which they have lived, one of the parties to the Treaty.* What I mean is that, under the possible enforcement, (if possible it could be considered) of that claim by the United States Government on that of the King, it was desirable that so far as the claim was based upon the Treaty with France above referred to, its foundation should be well examined, in concert with France herself. •

Under that sense of duty to the King and to all other parties concerned, on the 7th of November 1851, I addressed to Monsieur Perrin, at Paris, the despatch of which I annex copy, marked No. 1, conveying to him for submission to the Government of France, copy of the U. States Commissioner's official communication to me of the 31st October 1851, which I also annex, marked No. 2.

You will find my acknowledgement of that despatch, bearing date 12th November 1851, printed at page 82 of my report to the legislature of 1852. I concluded, assuring the Commissioner as follows:—
 “After knowing the views of the French Government in relation to the
 “VIIIth article of the Treaty of Laplace, I shall have the honor to
 “Reply, in detail, to your despatches of the 3d of March, and 31st
 “of October.”

Although M. Perrin has not yet placed me in a position to fulfil that promise to the Commissioner of the United States, yet, I repeat what I said in my report of 1852,—“It would be doing an injustice to the “generous and chivalrous character of the French nation, to suppose “that they will persist in keeping upon the King, a burden for which “all other nations having Treaties with His Majesty, have relieved “him. Monsieur Perrin cannot fail to make known that the King con-“sented to the reduction on French wines beyond the letter and spirit “of the VIth article of the Treaty with France, under a distinct under-“standing that it would be strongly recommended to France to make “a new Treaty with this Government omitting that and the III article; “he cannot fail to make known that, in the view of this Government “they had ever scrupulously executed all their previous engagements “with French officers, *made in the name of France*, without receiving “any equivalent whatever from France; and it cannot be possible that “the French nation, in its justice, can disregard those weighty consid-“erations in His Majesty’s favor, especially after His reference to the “President himself.”

What the sentiments of the King’s Government have been, and are towards France will clearly appear from my despatches of the 30th April and 1st May 1852 to H. B. M.’s Consul General and the Commissioner of the United States, requesting them to endeavor to procure the good offices of their respective Governments with France to induce her to accept of a new Treaty with this kingdom, similar to that

with the United States, of the 20th Dec. 1849, or that with Great Britain, of the 10th of July 1851. Of these despatches, I annex copies marked Nos. 3 and 4.

On the 24th Dec. 1851, Monsieur Perrin addressed to me a despatch acknowledging the receipt of mine of the 31st July, same year, (of which copy is appended at page 49 of the ministerial reports of 1852) which enclosed to him a copy of the new Treaty with Great Britain of the 10th of July 1851, and offered, for the acceptance of the French Government, a Treaty similar to that, or to the Treaty of the 20th Dec. 1849 with the United States, which had been offered before more than once,—all which Monsieur Perrin promised to lay before his government, and to make known to me their resolution regarding these overtures. You will find copies of the translation of that despatch, annexed under No. 5.

You will also find hereto annexed, copy of my reply of the 19th July 1852, marked No 6, enclosing copy of the resolution of the King in Council of the 1st of that month, which authorized me to offer to France, a Treaty similar to that with the U. States of the 20th Dec. 1849, to that with Great Britain of the 10th July 1851, to that expected to be concluded with Belgium, or to that concluded with the Kingdoms of Sweden and Norway of the 1st of July 1852—and further, enclosing copy of the XVth article of the latter treaty, which, in all other respects, resembled the British Treaty exactly. Monsieur Perrin on the 25th of April 1852 wrote to me from Paris, the despatch, of the translation of which, I annex copy marked No. 7. In that despatch he acknowledges receipt of mine of the 27th January 1852, (of which I shall speak hereafter,) refers to that of the 31st July 1851—states that the project of a Treaty with this Kingdom had been prepared in Paris, presenting only unimportant differences with the American and British Treaties, which project had been kept back, in the expectation of the arrival in Paris of Mr. Robt. Gould, of whom the French Government had heard, as the "Envoy Extraordinary of the King of these Islands,"—and concludes assuring me of the very benevolent intentions of the Prince President of the French Republic.

To that despatch, I replied on the 1st November, disavowing any authority from the government possessed by Mr. Robert Gould, and respectfully suggesting that the new Treaty, framed in Paris, should assimilate as much as possible to the Treaties already concluded with the United States and Great Britain, so as not to involve the King in fresh complications in His Relations with foreign powers. You will find copy of that reply annexed under No. 8. To prevent other evils which might accrue to the King's Government from the self assumed character of Mr. Gould, I issued the circular of which I annex copy, marked No. 9, which was published in the Polynesian No. 26 of 6th November, 1852.

I now return, as promised, to my despatch to M. Perrin of the 27th January 1852, acknowledged by him on the 25th April, same year, as before stated. Monsieur Wirt whom Monsieur Perrin had left to act during his absence, as Agent of French Commerce and Navigation, having been unhappily seized with *Paralysis*, remembering, perhaps,

that I had been, before, entrusted with the affairs of the French Consulate, made known his wish to me that I should take charge, until his recovery. In the existing state of the King's relations with France, however willing to render every personal service to that power, I did not feel that I could, with propriety, engage to perform the duties of Mr. Wirt; and, therefore, I addressed to him the letter of 20th Jan., 1852, of which, I annex a copy marked No. 10. Under these painful circumstances, I considered it an act of kindness to France, to make known as easily as possible, the derangement of the affairs of their consulate here; and hence my despatch of the 27th of January, 1852 to Monsieur Perrin, of which I annex copy, marked No. 11.

Monsieur Wirt made known to me, officially on the 22d of January, 1852, that he made over to the Baron de Thierry the consular agency of France, until his own recovery. Being thus invested with the agency of French Commerce and Navigation, the Baron de Thierry, alarmed at the lapse of nine months without hearing from Monsieur Perrin, on the 29th April, 1852, applied to me for a copy of the correspondence with Monsieur Dillon, for the information of the French Government, I annex copy of his despatch, marked No. 12.

To that despatch, I replied on the 30th April, 1852, enclosing the correspondence which he asked for, and taking occasion to renew the offer to the French Government, as made through Monsieur Perrin on the 31st July, 1851, or of a treaty similar to that with Great Britain of the 10th of July same year; of that reply you will find a copy marked No. 13.

On the 28th May, 1852, Monsieur Wirt, considering himself able to resume his duties, wrote to me officially, that he had resolved to do so; the Baron de Thierry taking a different view, objected to deliver the trust that had been delegated to him, both parties appealed to me, and a painful correspondence resulted, which it will be my duty to submit to Monsieur Perrin, when he resumes his functions, at the King's court. I have no doubt that he will approve of my steady determination not to interfere in the dispute, otherwise than by good advice to both parties, which I freely gave.

Since the King committed to my charge the department of his Foreign Relations, I have ever steadily kept in view, to liberate His Majesty from those restrictions upon his just Prerogatives, as an independent Sovereign, originally imposed by Capt. Laplace, in the name of France, in the IV and VI articles of his convention of the 18th July, 1839, (see page 304 of my printed correspondence with Monsieur Perrin) afterwards inserted in the III and VI articles of the Treaty with Great Britain, of the 12th February, 1844, because the judicial and commercial privileges involved had previously been accorded to France (see page 22 vol. 2 of the Friend of 1844) and subsequently, continued in the III and VI articles of the jointly concerted and altogether identical treaties with Great Britain and France, of the 26th of March 1846, apparently, for no other reason, (see page 100 and 102 of vol. 2 Statute laws.)

If the imposition of such restrictions was originally a wrong done to

the King, as I hold to be incontestable, under the law of nations, and if it was a French officer who first imposed them, which is a historical fact, it may be matter of surprize that France could so long refrain from repairing the injury by the voluntary relinquishment of conditions so onerous, originating with herself; but it cannot be believed, that having failed to do so, she will object to follow the example, in that respect, of Denmark, the United States, Great Britain, Hamburg, Bremen, and Sweden. There is no nation under heaven, more prompt and energetic in repelling any attack upon her own inherent sovereignty than France; and, directed, in her political march, by the PRINCE LOUIS NAPOLEON, who, pardoning the phrase, may be considered the very embodiment of that principle, she cannot possibly refuse to acknowledge the right of the King to its full benefit.

That principle which I have ever claimed for the King to its greatest extent, was fully acknowledged by a distinguished officer, whose name is still dear to the King and to every Hawaiian, Admiral Richard Thomas. The 10th article of the Treaty negotiated by him, on the 31st of July, 1843, in concert with the King and Kuhina Nui, the late Kekauluohi, was in these terms. "The whole of the preceding articles are to be subject to the approval and ratification or the modification of the British Government, and shall not contravene any of the Treaties or arrangements made or entered into by his Majesty's Ministers with the government of Great Britain, and nothing herein shall deprive His Majesty of any inherent or acknowledged right vested in an independent Sovereign." (See vol. 1 of Friend of 1843, page 42.)

That France, under a dynasty now expatriated, had gone far in contravention of that principle, in its application to this Kingdom, is evident from the following extract from Monsieur Dillon's unofficial letter to me of the 12th May 1848 (which referred to the concert between Monsieur Guizot and the Earl of Aberdeen, previous to the draft of the joint-treaty of the 26th March, 1846.) "M. Guizot's words in his note to Lord Aberdeen, on the subject were, if I am correctly informed, to the following effect. The privilege we claim for French and English subjects, is no doubt a great one, and one that viewed through the medium of international law, might be termed exorbitant; but we do not intend it to be a permanent arrangement, and France will gladly relieve the Hawaiian Government therefrom, the moment she learns that French subjects who repair to those Islands, on a humane intent, are treated with kindness and impartiality, and that the laws establishing freedom of worship are honestly and liberally carried out."

That similar views were entertained by the Earl of Aberdeen, will be seen by referring to his Lordship's despatches to William Miller, Esq., H. B. M. Consul General, at this Court, of 1st July, 1844 and 1st May, 1845, published at pages 28 and 29 of my printed correspondence with Mr. Perrin, who, in negotiating the Treaty of 26th March, 1846, did not fail to hold out those promises of future relief that M. Guizot had made.

Great Britain, in her Treaty of the 10th of July, 1851, has well redeemed all the pledges that were given by the Earl of Aberdeen, but France has still to redeem those given by Monsieur Guizot, although the conditions upon which they were based, have been long since fully fulfilled by this government. It is to be hoped that Monsieur Perrin, will return to this court, fully empowered to substitute for the Treaty with France of the 26th March, 1846, another with this government, as unexceptional, in all respects, as the Treaty with Great Britain of the 10th July, 1851, leaving to your free and independant action, as law-makers, those fiscal regulations, on which his opinions, as expressed in 1841, are supported by the most enlightened political economists.

Nothing can be more distinct than the abstract questions of political economy, which concern the welfare of a nation, in the development of its internal resources, and the formal stipulations of treaties, which concern the rights and prerogatives of the sovereign, in his relations with other nations, on which, officially, I have a duty to perform to his Majesty, which admits of no compromise. In the discussion of the first, the rule ought to be, what most conduces to the welfare of the nation and the happiness of the greatest number; in that of the second, the rule ought to be what is equal, fair, mutual and reciprocal, according to the usage of nations, though differing in power, yet equally sovereign.

France can be just to the King, in the admission of the latter principle, without being unjust to herself. The restrictions imposed by Laplace and continued in the Treaty of the 26th March, 1846, promote no French interest, as I have already shown, clearly, both to Monsieur Perrin and his predecessor, while they offend the King, and place France in the anomalous position of urging abroad, on others, what she rejects at home, for herself.

I now return to what I have said above, with reference to enclosure No. 2, upon the Diplomatic ground taken by the United States Commissioner, in relation to the *consequential losses* of Messrs Ladd & Co. under the VIII article of the Treaty of Laplace. On the 3d December, 1851, the Commissioner addressed to me the despatch, copy of which I annex, marked No. 14, asking in a tone of great courtesy and moderation, for certain explanations, upon the suits, in our courts, promoted by these parties. As nothing respecting which the Commissioner inquired, had been either discussed or decided, diplomatically, I could not otherwise reply to the Commissioner than by conveying to him, the explanations rendered by the special agent of the government to whom was entrusted, by resolution of the King in Counsel, the final settlement of the claims urged by Messrs. Ladd & Co.

With a view to obtain these explanations, I addressed to Mr. Judd, on the 6th December, 1851, the note of which copy is annexed, marked No. 15, along with copies of Mr. Scverance's despatches of 3d of March, 31st October and 3d December, and copies of my despatch to the latter of 6th March, which is annexed marked No. 16, also copy of my despatch to the same, of the 12th November, 1851, which you

will find printed at page 82 of the Appendix to the Ministerial reports of 1852.

I annex copy of Mr. Judd's reply of the 29th December, 1851, marked No. 17 and also of his "memorandum," of the same date, marked No. 18.

On the 31st December 1851, I enclosed copies of these two documents, and of my note to Mr. Judd, (No. 15 above referred to) to the Commissioner of the United States, without pretending to debate with him any of the points embraced in his inquiries, but expressing a hope that Mr. Judd's explanations, as special agent, in the matter, might prove satisfactory to him.

On the 5th January, 1852, the Commissioner replied that not having precise instructions to meet the case, he would forward the explanations rendered to the government of the United States. Of that despatch, I annex copy marked No. 19.

So far as I have been able to ascertain, the Commissioner has received no reply from the United States government, to the communications which, on that subject, he forwarded.

In the meanwhile, I have to inform you that Henry Hachette, Esq., the consul of his Majesty the King of Belgium, for San Francisco, on the 3d of November, 1852, wrote to me, officially, recommending specially Dr. Haine, as charged with all the affairs, of the Belgian Society of colonization in the Sandwich Islands, and the fully empowered attorney of that Society; enclosing a letter addressed to me from that gentleman. Of that despatch, I enclose copy of the translation, marked No. 20. In the letter so enclosed from Dr. Haine, this gentleman, referring to the contract of 17th May, 1843 between the said society, the government of the Sandwich Islands, and Messrs. Ladd & Co., inquires the views and intentions of this government, upon the subject of that contract. Of that despatch I annex copy of the translation marked No. 21. To Mr. Hachette, I replied on the 2d December 1852, and to Dr. Haine on the same date, under *flying seal*, through Mr. Hachette, as you will see by referring to the copies annexed, marked Nos. 22 and 23.

With Dr. Haine, I could not pursue a course different from that which I had done with the Commissioner of the United States, especially, as I could not recognize Dr. Haine as a diplomatic agent. Consequently I could only refer him to the special agent to whom the final settlement of all claims arising out of Messrs. Ladd & Co's. contracts, was confided, and enclose him in courtesy, a copy of the printed volume, containing the proceedings in their case.

On the 28th November, 1851, I received a despatch from Mr. Barclay, the King's Commissioner in London, making known that Monsieur Drouet, the *Charge d' Affairs* of his Majesty the King of Belgium had expressed the desire of his government to enter into more intimate relations with the Hawaiian Government. It pleased the King on the 23d February, 1852, to grant full powers to Mr. Barclay, to conclude a treaty with the representative of His Majesty the King of Belgium, similar to that with the United States or that with Great Britain, as you will perceive by my despatch to Mr. Barclay of the

same date, of which I annex copy, marked No. 24.

On the 1st May, 1852, by order of the King, I addressed to Mr. Barclay a despatch, authorizing him through the medium of the Representative of the King of Belgium to engage his Majesty's influence with France towards the adoption, by her of a similar treaty (supposing as I then did the treaty with Belgium already concluded) and towards the final settlement of all questions opposing the complete restoration of harmonious intercourse with the latter power. I append copy of that despatch marked No. 25.

On the 18th June, Mr. Barclay replied that he had communicated on the subject with his Excellency Monsieur Van de Weyer, the Belgium ambassador, and that he had referred to his government and awaited their instructions, to enter upon negotiations. A copy of the treaty, for ratification by the King may be soon expected.

On the 1st July, 1852, I had the honor to conclude, in concert with Capt. C. A. Virgin, of the Frigate Eugenie, a treaty with the kingdoms of Sweden and Norway, similar in all respects to the treaty with Great Britain of 10th July, 1851, excepting in the XV article, for which was substituted one assimilating in its terms to the XIV article of the treaty with Denmark of the 19th October, 1846. The treaty has been sent to his Majesty the King of Sweden and Norway for his ratification, and after ratification by the King, here, it will become the law of the land. To the treaty was appended the following additional article:—

"This treaty shall not be considered as permanently binding until "the ratifications have been exchanged as provided for in article "XVIII; but it has been agreed that from this date all the benefits "under it shall be extended to all subjects of His Swedish and Nor- "wegan Majesty."

On the 28th June 1852, Captain Virgin, under the powers possessed by him, granted a commission to Henry Hackfield, Esq., as consul for His Majesty the King of Sweden and Norway, for which he holds the King's *Exequatur*.

No reply has, as yet, been received from the government of the United States on the subject of the offer of special reciprocity, in the admission of their flour, fish, coal, lumber, slaves, and heading for the syrup, sugar of syrup, molasses and coffee produced on these Islands, made through their Commissioner, here, on the 1st of March, 1852, as per my despatch to him, of that date, which you will find at page 22 of the appendix to the Ministerial reports of 1852. In that despatch I made known to the Commissioner, that while perfectly aware of the difficulties besetting the question in the United States, I considered it a duty to the King to attempt such a special reciprocity, because, "So long as Hawaiian sugar can only be received in California and "Oregon on payment of 30 per cent duty, while American sugar is "admitted duty free, the difference is virtually a premium to annexation, which is contrary to the declared policy of the United States." I added, "I believe that among the planters and merchants gene- "rally, the best feeling prevails towards the King, but it is not a de-

"sirable state of things, that their fortunes, on these islands, should "not be in harmony with the perpetuity of this kingdom as an inde- "pendent state," and I concluded with the request to the Commis- "sioner. " You will be pleased to add, to the United States Govern- "ment that, under the treaties with Denmark, Great Britain, France, "and Hamburg, the same privileges would have to be extended by the "King to those governments, provided the same special considerations "were granted by them."

I have not changed my opinion in regard to the policy of removing that latent danger to the King's sovereignty, or of so conducting the march of his government, in all respects, as that the selfish interests of all who live under his rule, should come in, in aid of the loyal feeling towards his Majesty which has ever been and still is so remarkable.

The last Legislature with the laudable view of affording some encouragement to the, as yet, but incipient agriculture of the Islands, passed the act of 6th June, 1852, establishing the following differential duties on the produce of all countries having no existing treaty with this kingdom, viz:

2 cents per lb. on all sugars.

10 cents per gallon on all molasses and syrups of sugar.

3 cents per lb. on all coffee.

That no foreign interest might suffer from the want of early knowledge of the provisions of that act, I took care to make it known, officially, by circular, requesting its publication in newspapers abroad.— As yet, I have not heard of any complaint, under its operation, nor is any likely to arise.

Mr. Samuel N. Castle, having to visit the United States, on other business, kindly offered his services, there, with the view of effecting some international postal arrangement that would be for the benefit of both countries. To that end by order of the King and Council, I passed to him, on the 14th June, 1852, the note of which I annex copy, marked No. 26, together with copy of its enclosure marked No. 27. Soon after Mr. Castle's return he addressed to me the letter dated 17th January, 1853, of which I annex copy, marked No. 28, together with copies of its two most important enclosures, viz., the letter of S. D. Hubbard, Esq., Postmaster General, of the 15th October, 1852, marked No. 29, and Mr. Castle's reply of the 19th of the same month, marked No. 30. The suggestion of the Postmaster General to despatch the mails from New York for these Islands, in separate bundles, with the postage marked thereon, but not to be opened till their arrival here, and that of Mr. Castle to have such bundles strongly secured, have been approved by the King's government.

In accordance with the recommendation of Mr. Castle, the Postmaster of Honolulu, suggested an allowance of \$500 a year to Messrs. G. B. Post & Co. of San Francisco, to secure their agency in the reception and transmission of the mails for these islands. The King's government and the whole foreign residents are much indebted to that firm, for their gratuitous agency, in past years, when the trouble was

much greater, than it is likely to be, under the new system agreed upon with the United States. When that system is fairly in operation the trouble to the Postmaster of San Francisco, to forward the mails for these Islands, coming into his hands, separately made up, will be very small, and will fall within the orbit of his duties to his own government.

Previous to the correspondence with Mr. Castle, Wm. Miller, Esq., H. B. M's. consul General had recommended that a separate bag, containing the British and other European mails for these Islands, should be made up in London, to come through Panama and San Francisco, unopened to Honolulu. If such an arrangement should take effect, most probably it will be made the duty of the British consul in San Francisco, to see to the regular transmission of the bag from that port.

The arrangement concluded with the United States, and that expected to be made with Great Britain, will embrace the whole foreign correspondence with this kingdom coming from the eastward, and will ensure hereafter, a regularity in the reception at Honolulu, of letters and newspapers both from the old and the new world, the want of which, heretofore, has been made complaint of. From irregularities, hitherto, all have equally suffered, both the King's government, the political agents of Foreign countries, and even Monsieur Professor Remy, of the college of Rollin, in Paris, whose mission to these Islands, of peace and science, has much interested the King's government. Both by her Britannic Majesty's ship Amphitrite and steamer Virago, letters from Europe for these Islands, have been received by Valparaiso, 3, 4 and 5 months older, than if, after their arrival in Panama, they had been sent by way of San Francisco. An instance has occurred in which letters from Europe, via Panama, have not only gone to Valparaiso, but even to Sydney, before they reached their destination at these Islands.

The contract of 25th July, 1851, with Captain William A. Howard, afterwards joined by William Glen, Esq., and others of San Francisco, for the establishment of steam communication between the Islands, has led to no result. This is much to be regretted on account of the agricultural prosperity of the Islands, which inter-island steam communication would have greatly promoted. Neither have the privileges granted on the 16th February, 1852, to the said Mr. Glen, and to Allan Mac Lane, Esq., for a line of steam vessels to run between this port and San Francisco, nor the privileges granted on the 26th of March, 1852, to the same Mr. Mac Lane and Lieutenant Patterson of the United States Navy, for a line of steam vessels from this port to China, led to the establishment of such projected lines, which would have brought these islands, within the circle of the greatest civilization and the richest commerce of the world. But that Honolulu will not long hence be the grand middle Ocean depot, of a line of steamers between San Francisco and China and perhaps Japan, too, or of a line from Panama to these vastly populous and rich countries, or of two lines, one from Panama and one from San Francisco, cannot be doubted. Neither can it be doubted that we ought to look forward to such an event, and so to shape our policy, in all respects,

as to accelerate the period of its accomplishment, by affording every facility and encouragement within our means.

The King's government have not been able to co-operate, as efficiently as they desired, with the British and American governments, in the meteorelogical observations recommended by both governments — It is to the honor of Mr. Beckwith, head Teacher of the Royal school, that he has supplied the want, by his individual exertions, and so far as I can ascertain, very satisfactorily.

In September 1852, H. B. M's. Consul General, by order of the British Government, very courteously made certain inquiries into the judicial proceedings, here, which ended in the condemnation of the British vessel named the Enigma, owned in Hong Kong. Under section XIII of the act to organize the executive department of the King's Foreign Relations, I applied for the information required, on the 28th of the same month, to His Majesty's Chief Justice the Honorable Wm. L. Lee. The latter, on the 14th of October, placed in my possession a copy of the whole record of the proceedings, as they had taken place before him, in the *Superior Court*, along with the reply of that date, of which I annex copy, marked No. 31. On the same day I enclosed copies of the whole to Her Britannic Majesty's Consul General, who replied to me, on the 18th, expressing his thanks for the full explanations rendered, and that he would transmit them to his government.

On the 22d of October, 1852, Luther Severance, Esq. with like courtesy, applied officially, for information in regard to a citizen of the United States, Dr. Aaron Gregg, who had been arrested and fined one thousand dollars, and confined in the public jail, under a charge of smuggling spirituous liquors, from on board the schooner William, at Lahaina, contrary to a pledge given to him, as he alleged, by the district attorney at that place. I annex copy of that despatch, marked No. 32. Dr. Gregg had petitioned the commissioners of customs, with a view to obtain relief; and they met on his case on the 26th of October; but they did not feel themselves competent to decide it for reasons which you will find in their minutes of that day, copy of which I append marked No. 33. With a view to solve the doubts of their own competency and to obtain the best legal advice in the Kingdom, on all points of the case, on behalf of the commissioners, I sent all the documents bearing on it, to the King's Chief Justice, with the note dated 26th October, of which I annex copy marked No. 34. By the reply of Mr. Lee, of the same date, of which I annex copy, marked No. 35, you will perceive, that in his opinion, the commissioners were incompetent, under the law, as it stands, and that he recommended Dr. Gregg to lay his petition before the King. On the 27th October, I handed a copy of that opinion to Mr. Severance, with copies of other documents, bearing on the case, and he replied on the 27th, enclosing a petition to the King, with a request that I should present it to His Majesty. Of the reply I annex copy marked No. 36. The course recommended by the Chief Justice, and requested by the Commissioner of the United States, being in the spirit of the constitution of 1840, and in accordance with section XXI of the act to organize the executive

Ministry, as well as article 28 of the new Constitution, I had the honor to forward Dr. Gregg's petition to the King, with the despatch of the 29th October, of which copy is annexed, marked No. 37. Indisposition prevented the King from acting on the petition so soon as was, perhaps, expected; but it pleased His Majesty to remit, entirely that part of the fine imposed upon Dr. Gregg, which by law belonged to his Exchequer, which act of grace I made known to the Commissioner of the United States on the 23d November, as per copy annexed, marked No. 38.

I have thought it my duty to lay these documents before you, at length, because, although, under the laws of the United States, it is made the express duty of their consuls *at all times to endeavour to deter the subjects of the United States from smuggling, as well as from every other infraction of the local laws;* yet if the process of confiscation of vessels, under the American flag, and of fines on American citizens, should go on, as they have unhappily done, under existing laws, since the meeting of the last legislature, it cannot fail to breed much discontent, and may perhaps cool those sympathies, for us, of the United States government, and people, to which, as a nation we owe so much. While we have under inter-national law and by treaties, the right to enact our own bill of *fines and penalties*, it becomes us not to abuse that liberty, so that their greater cruelty or harshness, as compared with those of other nations, superior to ourselves in power and civilization should become palpable; and carefully to examine whether our fines and penalties be proportioned with that regard to degree of guilt which other nations use, and distributed in the same manner, and whether our fiscal regulations, however well intended, have not the effect of encouraging those very crimes, which our penal laws punish.

I may here observe that although, above, I particularly referred to the instructions under which the Consuls of the United States act, British and French consuls, and I believe those of all other nations act under instructions precisely similar.

I have another strong reason for submitting to you the correspondence above referred to. In what relates to the commissioners of customs, it clearly shows the necessity of a reform either in the law establishing commissioners of customs, or in the constitution of the board itself. Section XXXII of the law of the 6th June, 1848, provides:—“*His Majesty may appoint under the great seal of the kingdom, any number of persons, not less than three, nor more than nine, to be commissioners of Customs.*”

Under that section the persons nominated as Commissioners are the following, viz:

1.—The Collector General of Customs, *ex officio*, is a party interested in the punishment of all infractions of the fiscal and Revenue laws, within his department; but to whom, officially, a certain remitting power belongs by the usage of all countries and especially in this kingdom, under the authority of the Minister of Finance, as provided for in section 1 of the general provisions of the act to organize the executive department, page 192.

2.—Asher B. Bates, Esquire, who as District Attorney for Honolulu, may have prosecuted the very parties likely to appeal to the Commissioners of Customs, and who might consider himself disqualified thereby from acting as such, as he did in the case of Dr. Gregg—not to say anything of the other reasons of disqualification in judging of offences against the department of Finance that may, by analogy, be inferred, under the Vth article of the Constitution of 1840, and under articles 2 and 92 of the new Constitution.

3.—R. C. Wyllie, Esq., who as Minister of Foreign Relations, obliged to discuss diplomatically, all questions, after they may have become international, ought not to have taken part in any previous decision, upon any question whatever, liable to be complained of by the accredited agent of any Foreign power.

For these reasons, my decided opinion is, that the present board is improperly constituted, and that no commissioner of customs should hold any other office under the King's government.

The repeal of section VIII of the law of the 15th June, 1847, providing that before a ship could be cleared, the master should produce to the Collector of customs a certificate from the consul of his nation, that all local charges and demands in his office against said vessel, had been paid, was not favorably looked upon by the consuls of those nations whose shipping most abounds in our ports. There are cases in which, notwithstanding the provision in the navigation laws of foreign countries, the captains of vessels calling at, or making a short stay at the islands, evade the presentation of their papers to their consuls, altogether. Wherever any captain might have transacted business with any custom house, the law now repealed, was an effectual assistance to the consul, in the discharge of his duties to his own government.—It is quite a mistake to suppose that we have no inter-national obligations towards a foreign Consul. It is our duty to assist him, to capture deserters, to quell mutinies and revolts; to secure and imprison offenders against the laws of his country, to be sent home for trial; to allow him to take cognizance, and assist him in taking cognizance of all offences committed at sea under the flag and jurisdiction of his nation, by subjects of the same, and when required to lend our courts under certain circumstances, for suits instituted by him.

In all these respects it is our duty, not to be behind other nations, in our civility towards foreign consuls, who on many emergencies, are able to render us powerful support. Of this, we had an instance, not likely to be soon forgotten, in November last, when but for the influence of the foreign Consuls, generally, but more especially of the United States Commissioner and Consul, a riot of the sailors of the American whaling fleet, could not have been quelled, without the effusion of much blood; and perhaps the destruction of the town, and of the whole shipping in the harbor. Had that influence been less successful, martial law would have been proclaimed, and the whole military and police force called out to put an end to the riot. Its suppression, by force, could not have been difficult from the beginning, but not without great danger to life and property. Lieutenant General

Prince Liholiho, in his own name and that of the Governor, with a foresight, and in a spirit of forbearance that did them much credit, at the commencement of the tumult, at 4 1-2 P. M. of the 10th November, requested me to apply, officially, to the Commissioner and Consul of the United States, which was immediately done, with the most happy results.

The system of forbearance adopted was fully approved of by the highest military authority in the kingdom, and was so satisfactory to the Foreign residents and community, generally, that a company of foot volunteers, and another of cavalry were soon after organized in support of the King's authority, of law and order.

While on the subject of foreign Consuls, I take occasion to repeat to you, what I said to the last Legislature, viz:

"Depending so much, as we do on the good opinion and sympathies of the world, it is desirable that we shew our respect for foreign nations, by every proper courtesy to those who represent them, and rather to go beyond what is usual, than to fall short of it."

Now what is the courtesy which other nations shew to the Consuls of foreign nations residing in their territories? In answer to this question I refer you to the following extract from Robert Fynns' work of 1846, chapter V, on the jurisdiction and privileges of a Consul:—

"He is respected in a particular manner; on his arrival he is allowed a free entry for his furniture and baggage; he is exempt from the excise on inland duties on liquors and other articles of consumption for himself and family; he is entitled to a seat on the bench with the Magistrates of the place, whenever he is obliged to appear at their assemblies; to act as counsel for the subjects of his nation in all cases of dispute between them and the natives of the place. He is exempt from lodging the military in his house, and is to be furnished with a guard, when he requires one, to aid and assist him in the maintenance of his authority over the subjects of his own country trading to where he is located."

In further reply, I refer you to the following extract from Mr. J. S. Henshaw's Manual for United States Consuls of 1849 : "It is customary to allow certain privileges in civilized countries to all foreign Consuls of friendly nations. Each of them is usually entitled to a free entry for the furniture, luggage and necessary goods for himself, his family and suite, upon his first appointment; an exemption from the internal Government duties upon a reasonable supply of all articles of consumption for himself and family; a seat on the Bench with the Magistrates of his station, when obliged to appear as Counsel for the subjects of his Consulate; and exemption from lodging the military in his house; a guard or the aid of the Police force, to assist him, when required in the enforcement of his Consular authority over transient subjects within his Consulate, and several other incidental privileges, varying in different countries. He is entitled to special respect for the flag and functions with which he is charged, and may claim the distinction of being invited to at-

"tend a session or Court of local Magistrates, when his presence is required, instead of being called by summons or citation."

Of these authorities, the first is a British Barrister at Law and the second an American Counsellor at law.

You will observe that under the new Constitution, the treaty-making power, as in other Constitutional Monarchies, is the prerogative of the King, acting by and with the advice of His Privy Council. The Legislature cannot pass any law, infringing any provision in any of the King's Treaties, without discrediting themselves, and endangering the peace of the Kingdom in its foreign relations.

In my Report to the Legislature of 1852, I informed them that the King's Government on the 15th March 1851, invited the French Government to consider the Treaty of the 26th March 1846, as at an end in 12 months from that date—that I had repeated that invitation on the 31st of July 1851, but that until a reply was received from France, it would be indiscreet to act upon these repeated notices. Lest you should infer from the above, that you are now free to legislate on Importations just as if the Treaty with France of 26th March 1846, were now of no force, I must enter into a few explanations.

In the clear and express terms of that Treaty, it is one between His late Majesty the King of the French and His Majesty the King of the Sandwich Islands, their heirs and successors, and it contains no article or clause fixing any period to its duration. Under the law of nations it is my duty to tell you that such a Treaty belongs to the class of what writers on inter-national law call a "*real*" Treaty—that is, a Treaty not with the sovereign, personally, but with the State, perpetual in its obligations, and not terminable, except by mutual consent. Vattel says : "When a King declares in the Treaty that it is made for "him & his successors, it is manifest that the Treaty is real. It is "affixed to the State and made in order to last as long as the Kingdom "itself."

But you may ask, why in view of a principle so clear in inter-national law, did I presume to give notice to France that the King would consider it as ceasing and determining within one year from the date of my notice?

In reply, I have to state that the same author, Vattel, states, in another place : "A Treaty is valid, if there be no fault in the manner "which it was concluded; and for this purpose nothing more can be "required than a sufficient power in the contracting parties, and their "mutual consent sufficiently declared."

Now if you will turn to my Report to the Legislature of 1846, you will find that I stated as follows : "Although the new Treaty to the "same effect with France and Great Britain, in many respects, is a "great improvement upon those which it abrogates, yet the IIIrd and "VIth articles are so objectionable even after the modifications made "in them, that His Majesty would have declined to accept it, but for "considerations of respect for the Earl of Aberdeen and Monsieur "Guizot, who prepared that Treaty by mutual concert, and on whose "behalf assurances were received that such future alterations would

"be made as the circumstances of the Islands might be shewn to require."

Of the assurances given, I have spoken above at pages 73 and 74

The King signed the Treaty in the faith of these assurances, but with a consent so qualified by His reliance upon them, that I was ordered to transmit, for the acceptance of the French and British Governments, the draft of a substitute Treaty, which you will find marked, enclosure No. 8, to my Report of 1846.

Nothing therefore can be clearer to my mind than this—that notwithstanding the *real* and perpetual character of the Treaty of 26th March 1846, neither France nor Great Britain intended, at the time, that it should be more than provisional in those articles which unduly restricted the King's prerogatives. International law recognizes the force of *tacit faith* of the *intention* and of the *understanding* of the parties, in Treaty engagements.

In entire consistency with this view, by order of the King, I drew up, and passed, officially, to the Consul of France, and the Consul General of Great Britain, the Protest of the 29th February 1848, which you will find at page 29, of my Report of that year—stating among other grounds for that act that, by international law, the subsistence of the word *wines* in the Treaty with France, annulled the concession demanded for, and rather than offend France, granted to France, for all wines of French growth not containing above 18 per cent of alcohol—and that the French and British Treaties of the 26th March 1846, should not exist for any period beyond what might be absolutely required to enable those Governments to concert *de novo* in regard to articles of convention more equitable.

It will be seen by referring to page 55 of my correspondence with Monsieur Perrin, appended to the Reports of 1851 that I considered the Treaty of 26th March 1846, violated by M. Dillon in its 6th article; by referring to page 129, you will see that I enclosed to him on the 7th March 1851 an abstract of accounts shewing that that alteration of the Treaty had occasioned a loss to the King's Treasury, from the date of the alteration (29th February 1848) to the 20th February 1851, of \$15,093 73 cents, as shown at page 149; and by referring to page 165, that that loss formed one of the claims, referred by the King, to the decision of the Prince President of France, on the 21st March 1852.

By referring to page 129, of the same Despatch of 7th March 1851, you will find that I quoted to him the following extract from my Despatch of the 30th April 1849 to the Minister of Foreign Affairs of France:—"M. Dillon shortly after his arrival, professed great anxiety "to aid in freeing the King from the undue restrictions upon His "Majesty's prerogative in the IIIrd and VIth articles of the French "and British Treaties, of the 26th March 1846, and inspired the "King's Ministers with hopes that his influence in Paris would pro- "cure the abrogation of those abnoxious articles, or a Treaty entirely "new. With such promises and such hopes, the King's Government "very readily yielded to Monsieur Dillon's claim, in regard to

"French wines, although it did appear strange to this Government
"that he should venture to make such a claim contrary to the wording
"of the VIth article, and after the late King (of France) had ratified
"the Treaty, without any objection to the wording of that article."

It will be further found, by referring to page 89 of the same correspondence, that on the 27th of February 1851, I made officially known to Monsieur Perrin, that on the 27th March 1846, the King, after having declared in Privy Council His strong objections to the two identical Treaties of the 26th, commanded me to submit the draft of a new Treaty (that already referred to, page 84) to the Governments of France and Great Britain, "and give notice that the Treaties now existing were oppressive and injurious to His people, and would be considered by Him as at an end in one year, from the date of such notice."

A reply from the British Government was received, through Mr. Barclay, dated the 2d November 1846, in which he stated that through Mr. Addison, the under secretary of State in the Department of Foreign Affairs, he had learned, it was their opinion that the best course was to wait and see the working of the Treaty, (that of 26th March 1846,) and that if it should be found to bear hard upon the King and people of the Islands, there would be a reasonable ground for revising it and making such alterations as might be considered necessary to remedy practical evils; but no reply was ever received from the Government of France, either directly or indirectly; and the King relying upon these renewed assurances of future ameliorations, through Mr. Addison, gave no order to carry the above notice into effect.

But the promised relief not having then come, I was authorized by the King to instruct Mr. Judd, as I did in June 1850, that, if all difficulties about the Treaty of 26th March 1846, could not be settled to the entire satisfaction, both of France and Great Britain, he was to notify to both Governments that, the King desired to be relieved from those instruments of their own proposal, and which had so disappointed all parties; and that He would consider them as terminated in one year from the date of such a notice. Unfortunately Mr. Judd received those instructions only after he had left Europe.

The King's Government had hoped that the consent of Great Britain and France to grant to His Majesty the relief promised, and expected, would not long be delayed on the grounds which you will readily understand by perusing my Despatch of 1st March 1848, to H. B. Majesty's Consul General, of which and of its enclosure, I annex copies, marked Nos. 39 and 40.

It was only after all these proofs, that the Treaty with France, although perpetual in its terms, was never intended to be so by France—was never freely and unconditionally consented to by the King, and was, in fact, a source of grievance to both countries, that, on the 15th March 1851, in replying to the ten demands made, in the name of France, I remarked to Monsieur Perrin as follows:—"The King's Government invite the Government of France to adopt the same Treaty "mutatis mutandis," as that lately formed with the United

" States, or to consider the Treaty at an end in 12 months from this date; and, in the meanwhile, to form a new Treaty, free from the objections and ambiguities of the old. The King's Government consider that France is specially bound to remove all the restrictions imposed on the King in the IIIrd and VIth articles of the Treaty of 26th March 1846, both because He was deprived of His rightful prerogatives of sovereignty by a French officer, under a threat of instant war, and because the Government consented to the reduction of the duties on wines, on the condition of the removal of those restrictions to which M. Dillon repeatedly pledged himself, with emphatic promises of his best endeavours."

It could not possibly be, that Monsieur Perrin, in delivering to the head of the French nation the reference of the King, could fail in the duty of elevating to the cognizance of that exalted personage, all the efforts so consistently and frankly made, in regular diplomacy, to unshackle the King from the restrictions in the aforesaid Treaty of the 26th March 1846; and, still less can it be, that Prince Louis Napoleon under the confidence placed in His judgment and integrity, taking all the circumstances which I have mentioned into his careful consideration, in connexion with the maxims of international law, can fail to repair the grievances of the King, originating with officers of a by-gone Dynasty, with all that delicacy towards His Majesty's rights that the Prince President would exact, were the cases referred to Him his own, the more especially as all the restrictions are not on one side, for, if by the VIth article, the King, under no circumstances of penury of His revenue, can raise the duty on imports from French ports [spirituous liquors and wines excepted) higher than 5 per cent *ad valorem*, on the other hand France cannot import into the dominions of the King her spirituous liquors and wines (supposing the alteration in wines void, under the wording of the Treaty, and for want of the consideration promised) except under a duty as high as this Government may consider equitable, subject to the only condition that that duty shall not be raised so high as to become an absolute impediment to the importation of the said articles. This restriction is one of no small amount to France, for by the valuable statistics of Mr. Bishop, the Collector General, published in the Polynesian, No. 38, of 29th January last, during 1852, 8189 gallons of brandy were consumed, benefiting the King's revenue to the value of 42,445 dollars,—*no small consideration under a deficient revenue.* Now, supposing the King were at liberty to raise His revenue, in His own way, as France is, and as He ought to be, it is not likely that He would ever think of raising the import duties higher than 5 per cent, except upon a few articles of luxury, and on them the additional duty might not much exceed the above \$42,445. The question of the Treaty of the 26th March 1846, as between France and this Kingdom is simply this—it is not desirable for France to give perpetuity to that Treaty, because she would perpetuate the right of this Government to tax her spirituous liquors and wines, according to the measure and rule given in the 6th article; and it is derogatory to the King that the same Treaty should last, for-

ever, because the same article impairs His sovereign prerogative.—Hence it is the interest of both countries that that article should no longer exist in any Treaty between them.

So soon as the result of the reference to Prince Louis Napoleon becomes officially known, what may remain to be concluded can only be done regularly, in the usual course of diplomacy, the final issue of which, it will be my duty, with the King's leave, to make known to you.

There is nothing that has exalted the character of this nation, in the past, and procured it so much sympathy, under all its late troubles, as the proof which has been afforded of its fidelity to its Treaty engagements. Let such be its character in all time coming.

Vattel says :—“The faith of Treaties, that firm and sincere, that “invariable constancy in fulfilling engagements, of which declaration “is made in a Treaty, is then holy and sacred between the nations “whose safety and repose it secures; and if people would not be wanting to themselves, infamy would ever be the share of him who violates his faith. He who violates his Treaties, violates, at the same “time, the law of nations; for he despises the faith of Treaties, that “faith which the law of nations declares sacred, and he does all in his “power to render it vain.

“Thus, all nations are interested to maintain the faith of Treaties, “to render them everywhere sacred and inviolable; they have also a “right to unite in order to humble him who shews that he despises “them, who openly plays with them, who violates and tramples them “under his feet. This is a public enemy who saps the foundation of “the repose of nations, and of their common safety.”

That inviolable respect to public faith well becomes all nations, and more especially us, whose Government, in its recent civilized forms, reposes upon a christian foundation, and whose acknowledgment, with the rights and privileges of independent sovereignty, was made, expressly, on the assumption that we were capable of providing for the regularity of our relations with foreign nations. Let us not, in 1853, belie the opinion that was entertained of us, in 1843, nor ever dishonor our religious profession by a disregard of our word, of truth, of honesty, or any evasion or shuffling, under our promises, pacts, agreements, conventions or Treaties. God himself is the avenger of broken agreements, as instanced in the plague which he sent upon his own people for their conduct contrary to their pact with the Gibeonites.

While on the subject of our Treaty engagements with foreign powers, I think it necessary to guard you from a misconception of the position in which we are placed by the IIIrd article of the Treaty with Denmark of 19th October 1846—the IIIrd article of the Treaty with Hamburg of the 8th January 1848—the IIIrd article of the Treaty with Bremen of the 7th August 1851, and the XVth of that with His Majesty the King of Sweden and Norway, of the 1st July 1852, which provide that, in time of war, the vessels under the flags of those nations, within the harbors and roads of the King, shall receive all possible protection against the enemies of those flags, with the modification, in the latter Treaty, that that protection is to be *short of actual hostility*.

The whole force of those articles consists in this, that in the event of war, not with us, but between foreign nations hostilizing each other upon our coasts, as an independent sovereign Kingdom, not a party to the war, we are not to be wanting to ourselves in the assertion of our neutral rights. We owe it to ourselves, and to all nations, in such an emergency, to assert those rights, and when the case arises (as I hope it may not) I shall not fail, in the King's name and with His Majesty's permission, to assert them most vigorously, in favor of any vessel pursued or captured within the limits of His Majesty's marine jurisdiction, whatever might be the flag of that vessel.

As the King's Minister of Foreign Relations, responsible to the King for the faithful discharge of my duties, under all the requirements of inter-national law, I could not omit so important a duty as that of the assertion of His Majesty's Sovereign rights, and to protest energetically against any wrong done to a friendly nation within His jurisdiction.—Let me explain to you what international law requires.

A justly celebrated American Publicist, Henry Wheaton, L. L. D., formerly a minister of the United States, at the court of Berlin, in his elements of inter-national law says:—

"The maritime jurisdiction of every state, extends to the ports, harbors, bays, mouths of rivers and adjacent parts of the sea enclosed by head lands belonging to the same state. The general usage of nations superadds, to this extent of territorial jurisdiction, a distance of a marine league, or as far as a cannon shot will reach from the shore, along the coasts of the state. Within these limits, its rights of property and territorial jurisdiction are absolute and exclude those of any other nation. * * * Not only are all captures made by the belligerent cruisers within the limits of this jurisdiction, absolutely illegal and void, but captures made by armed vessels, stationed in a bay or river or in the harbor of a neutral state, for the purpose of exercising the rights of war, from this station, are also invalid. * * * There is, then, no exception to the rule that every voluntary entrance into neutral territory, with hostile purposes, is absolutely unlawful. When the fact is established, says Sir William Scott, it overrules every other consideration. The capture is done away; the property must be restored, notwithstanding that it may actually belong to the enemy. * * * Though it is the duty of the captor's country to make restoration of the property thus captured within the territorial jurisdiction of the neutral state, yet it is a technical rule of the prize court to restore to the individual claimant, in such a case, only on the application of the neutral government, whose territory has been thus violated. This rule is established on the principle that the neutral state alone has been injured by the capture, and that the hostile claimant has no right to appear for the purpose of suggesting the invalidity of the capture."

Thus you will see, that, if, for example, a United States vessel of war should capture a British or French vessel, or a vessel of any other nation, friendly to this country, within any port or road of the King, or within cannon shot, that is three miles off any part of the coast, it is only the King that could require of the United States government to

return to the nation to which the vessel belonged, the full value of it. So to require could not involve His Majesty in a war with the United States, but so *not* to require, would give just cause of complaint to the nation of the vessel captured, and if it led to no worse result, would at least lead to the conviction that the advisers of the King were ignorant of their duties, under the law of nations.

What mine are, in the position which I have the honor to hold under the King, are clearly defined by inter-national law, as follows:—
 “It is to the chief of the Ministry of Foreign Relations, that it belongs to enter into conference with the public ministers of Foreign powers, to listen to their reclamations and their proposals, to answer them, in the name of his Sovereign, to discuss reciprocal interests, and to begin with them and conduct to the end, negotiations, properly so called.”

“It is he also, who is charged to draw up, or cause to be drawn up, the public acts emanating from the Sovereign, and published in his name, relative to political affairs, such as treaties of peace, of alliance, of commerce &c.—the conventions to regulate the limits and demarcations of frontiers; declarations of war, manifestoes, the *exposes* of the causes of war, or of any other hostile measure which his sovereign has thought it right to take in regard to any other power; the answers and replies to official documents which any other power may have thought it right to publish.”

“It is consequently to the lights of the chief of this department that it belongs to contrive and choose the best political system founded on the only true interests of the country; to seize always the ways most advantageous, to take opportune advantage of all events, and to know how to accommodate and combine all the measures taken to form and execute that political system, adopted in favor of the State.”

“It is he who is charged to introduce and conduct negotiations for the marriages of the Princes and Princesses of the family of his sovereign, to notify to foreign Courts the births and deaths of Princes, where the sovereigns themselves do not write cabinet or autograph letters.”

“Moreover, to him it belongs to regulate and cause to be observed whatever relates to Diplomatic Ceremonials both for the Diplomatic Agents sent to foreign countries, and for those accredited near his own sovereign.”

The same high authority from which I quote—Le Baron Charles de Martens—says, in regard to the conduct of foreign affairs, generally: “There, nothing can be exacted, nothing can be prescribed; it is necessary to ask, solicit, negotiate; the least inconsiderate word may offend a whole nation; one false step, one false calculation, one hazardous combination, one simple indiscretion, may compromise both the dignity of the Government, and the interest of the State”

In some of the Treaties which I have mentioned above, viz. that with Denmark, that with Hamburg, and that with Bremen, it is made incumbent upon foreign Consuls to zealously settle, amicably and ex-

trajudicially, all difficulties arising with their fellow countrymen; and upon the presiding Judge of the Court of foreign causes to communicate to such Consuls, when any of their countrymen are to be tried there—and also upon the Prefect or other officer of the Police to convey information to such Consuls when any sailors or others of their fellow countrymen are committed, in consequence of police or other offenses.

The duty which that Treaty provision imposes on foreign Consuls of the countries named, is only in accordance with their instructions from their own governments, and with their obligations under the law of nations; much trouble and obloquy resulted to the King's Courts, in 1845 and 1846, and a vast deal of harrassing diplomatic correspondence was thrown upon myself, owing to the neglect of that very beneficial and important duty, by some foreign Consuls, and other foreign agents of higher rank, of whom some are now gone to their last account, and the others are now absent; in place of performing that duty honestly, it seemed to be their object to break down entirely the King's Government, by giving to the world proofs, as they attempted, of the inefficiency of its tribunals, and the alleged barbarities of its prison regulations; after a careful perusal of the somewhat celebrated *table of Consular grievances*, referred to at page 25 of my Report to the Legislature of 1846, the negotiator of the Danish Treaty, *Captain Steen Andersen Bille*, while relieving the King from the restrictions upon His Prerogatives, in the IIIrd and VIth articles of the Treaties of 26th March 1846, taking, as I understood him, the view that no regular Government could exist, with such continual annoyance to its Courts of Justice, concurred with me in the attempt, through the VIth article of the Danish Treaty, to remedy the evil, by providing that the Danish Consul should do his duty, on his part, and that the Courts of the country, on theirs, should give him an opportunity of attending them, if he pleased, to see that they did their duties, in accordance with the Treaty, which, by the law and usage of nations, is the duty of Consuls to their own Governments. I have already shewn, at page 82, that foreign Consuls even without any such Treaty stipulations have the right to attend our Courts—to act as Counsel for their countrymen, if they think necessary, and to sit therein in a place of distinction.

The trouble of giving the requisite notices would be very slight, if blank printed forms for Consuls were kept ready to be filled up, as in the case of ordinary summonses, but in the courteous language suitable to their rank; while the relief, sought to be obtained, was one of immense magnitude, at that time, as any one, who will take the trouble of reading the files of the Polynesian, for the years mentioned, and for that of 1847—and also the Sandwich Island News, will easily convince himself.

The reputation of our Courts, happily, has now, for several years, been so well established, that, unless, in some very extraordinary case, a foreign Consul would think it a burden upon his time to attend in them, during the progress of any trial.

A statement has appeared that it has pleased His Majesty the Em-

peror of Russia to appoint an experienced Diplomatist, to represent Him at this Court, in the character of Consul General. I have received no official notification of such an appointment, which could not fail to please the King and strengthen His position, as an independent sovereign.

On the 3d February 1851, Alfred A. Reed, Esquire, the King's Consul at Batavia, made known to me that His Excellency the Governor General of the Dutch East Indies, had written to his Government, on the subject of a Treaty between this Kingdom and that of Holland. It has subsequently been made known that His Majesty the King of Holland has authorized His Excellency the Governor General to negotiate on that subject with Mr. Reed, whenever he obtains the necessary powers.

Every new Treaty made is a fresh recognition of the King's sovereignty, and an additional security for the enjoyment of that independence which is no less necessary to the preservation of His native subjects than to the equal advantages of all commercial nations, whose ships now traverse, or are likely, in future, to traverse the Pacific ocean. The great *desideratum* is to procure a uniformity of sense, purpose, privilege, and of fair mutual advantage, in all those solemn instruments which unite nations in bonds of amity, peace, and mutual exchange, for the advantage of each other. For this I have always contended to the utmost extent of my humble ability.

On the 10th November 1852, the United States Commissioner presented to me a commission from the President, appointing Thomas Miller, Esq., Consul of the United States for the port of Hilo and all other ports nearer thereto than to the residence of any other Consul or Vice Consul of the United States. It pleased the King to order an *Erebatum* to be granted to Mr. Miller, who is now in the exercise of his functions.

The United States have thus a Commissioner and three Consuls to look after American interests within the King's dominions. The King's Government would be glad that the same gentlemen should be continued by the new President.

On the 10th December 1852, Robert C. Janion, Esq., made known, officially, that having to visit England, he had appointed Elijah P. Everett, Esq., subject to the approval of the President of Chile, to act as Consul of that Republic until his return. The King was pleased to approve of Mr. Everett's appointment.

James Jackson Jarves, Esq., who was appointed Consul for the King to reside in Boston, in August 1848, after having served His Majesty in a high diplomatic capacity, has gone to Europe to reside. No one, as yet, has been appointed to act in his place.

In my Report to the Legislature of 1851, I stated that it was desirable that the King's Consul at San Francisco, should possess a knowledge both of the Hawaiian and English languages. From the 1st September 1851, when Granville S. Oldfield, Esq., resigned, the duties of the Consulate were performed by John F. Spencer, Esq., whom Mr. Oldfield had left, provisionally, in charge. It pleased the

King, on the 9th of November last, to appoint Charles E. Hitchcock, Esq., as Consul for that port.

The King has approved of the appointment, by Edward Beyerbach, Esq., His Majesty's Consul General for Chile, of Joseph Gray, Esq., as Hawaiian Consul for the port of Talcahuano. Mr. Gray was received, as such, by the Government of Chile, on the 26th January 1852.

On the 21st June 1852, I received a letter from a highly talented gentleman residing in Sydney, who has paid great attention to the progress of this Kingdom, and believes its interests may be promoted by opening a friendly intercourse between it and other groups of Islands which stud this ocean, offering his services to explore them, gratuitously, if duly commissioned by His Majesty. Certain preliminary enquiries having been necessary, it was only on the 14th of last month that I received orders from the King in Council to prepare the proper commission and instructions for His Majesty's approval, which I confess, I have not yet had time to attend to. The proposed exploration can do no harm, whilst it promises to place the King's Government in possession of much valuable information, and may open new channels of trade, of great benefit to these Islands, and conducive to the civilization of others.

Since the alteration in the passport law, the Department of Foreign Relations has ceased to be a source of revenue. It has always been my endeavour to keep its expenses on the lowest scale compatible with the due performance of its duties. Hence, for the King's agents residing abroad, I have uniformly recommended to His Majesty, gentlemen of such fortune and social standing as to enable them to maintain their position, on an equality with the agents of other foreign nations, from their own resources, and without more charge to His Majesty's scanty revenues than the bare reimbursement of what postages and other small outlays they have to make in the discharge of their duties. Many of these agents serve the King with great zeal and labour, watching over His Majesty's honor and the interests of His Kingdom, in their respective spheres, with as much fidelity as if they had been born in His Majesty's allegiance. I may say of them, generally, that no sovereign on earth was ever more faithfully served by His diplomatic and Consular agents, in foreign countries, and at so little expense, as King Kamehameha III. The whole duties of corresponding with them, and with the Diplomatic and Consular agents residing at the King's Court, and all other duties belonging to me, ministerially, have always been, and are performed by myself alone, excepting only copying, and, latterly, some little translating into the Hawaiian language.

I respectfully refer you to the Report of the Minister of Finance for the estimate of what my Department will require during the current year.

In addition to what the Minister of the Interior says, in his Report, of the want of room for the Government offices, I would remark that the space allotted to me, is quite too small for the voluminous archives

that are under my charge, and the locality is objectionable, as being too public, too noisy, too hot, and too dusty.

Since the departure of Louis H. Anthon, Esq., for Copenhagen, I have, with the permission of the King, performed the duties incumbent upon him, as Consul of His Majesty the King of Denmark. I do not hold the office, but simply perform its duties, as a comity of the King towards His Danish Majesty; and all Consular fees that accrue, I reserve to hand over to the Consul, himself, when he returns, as has been my invariable practice, in every case where I have acted for foreign Consuls, in former years. While the 99th article of the new Constitution was being discussed, I represented all these circumstances, and that, in my view, it was no contravention of that article for me to continue rendering such service to the King of Denmark, or to render the same, to any other sovereign or State, on a like emergency, if it pleased the King to permit me.

The preceding Report, in conformity with the 54th article of the Constitution extends only to transactions previous to the 1st of January last. On the 8th of that month, Monsieur Louis Emile Perrin returned to this Kingdom, as the Consul, Commissioner and Plenipotentiary of France. Referring you to what it has pleased the King to say in His Gracious Speech, I would simply add that, I am prepared to resume the negotiations with Monsieur Perrin, under all the favorable auspices of the fullest assurances of the benevolent intentions of His Imperial Majesty Napoleon IIIrd towards the Hawaiian people, generally, and especially towards our sovereign, personally; and that, Monsieur Perrin, as His Majesty's Plenipotentiary, is disposed to give practical effect to those intentions, so as to obliterate all traces of past disagreement, to consolidate the King's independence, perpetuate Hawaiian nationality, and establish, on a permanent basis, those relations of amity and commerce which unite nations by the strongest of all bonds, those of mutual respect and interest.

The Emperor of France disclaims any exclusive ambition, right, interest or advantage in regard to these Islands, in the emphatic terms in which Monsieur Perrin addressed the King, on the 1st of February, which you can read in the Polynesian, No. 39 of February last.

So soon as the negotiations are concluded, I shall with the permission of the King, make you duly cognizant of the results; and so soon as possible, thereafter, I shall submit to the consideration of His Majesty's Government, a national Tariff, so framed as to encourage exports, impose the chief burden of Taxation on those articles of luxury which are consumed by the rich, and reduce it on those articles of necessity, without which, the industrious poor cannot subsist.

GOD PRESERVE THE KING!

R. C. WYLLIE.

Foreign Office, 6th April, 1853.

REPORT
OF THE
SECRETARY OF WAR, AND OF THE NAVY,
TO THE
HAWAIIAN LEGISLATURE, APRIL 1853.

According to the 15th article of the new Constitution, granted by the King on the 14th of June 1852, *each member of society has a right to be protected by it, in the enjoyment of his life, liberty, and property.* That provision of our Constitution is in harmony with a fundamental principle which pervades all free Governments, and is the very foundation upon which those who rule others, rest their right to govern them. "*Protectio trahit subjectionem, et subiectio protectionem,*" *protection carries with it subjection and subjection protection,* was a maxim of Roman law, and, in all modern Governments, it is a well understood principle. But no Government can protect life, liberty, and property, by merely writing down the words; it must have, at its command, an adequate force, and that force cannot be maintained without money.—Both the men who compose the force, and the money that is to pay for it, are drawn from the members of the society, who look to the Government for the proper application of the means, which they furnish, to the protection of their lives, liberties, and properties. Hence, in the same article of the new Constitution, follow these words: *He (each member of society) is obliged, consequently, to contribute his proportional share, to the expense of this protection; to give his personal services or an equivalent, when necessary.*

It was not the ancient usage of the Hawaiian people, that their Kings should be without an armed force. On the contrary, there was a feudal organization, enabling the King to muster in arms, almost the whole able bodied population, on any occasion of emergency. The old constitution implied the existence of an armed force in the provision, under the head of prerogatives of the King: "*He shall have the direction of the army, and of the implements of war of the King-dom.*" The King is recognized as *Generalissimo* of the whole military forces of the Kingdom; and, under His Majesty, His Governors of Islands are recognized as the commanders-in-chief of the military power in their respective Islands, in article V., Chapter IV., part 1, of the second act of Kamehameha III., of the 27th April 1846. By

the same article, all male subjects of His Majesty, between the ages of 18 and 40 years, are subjected to military duty in the respective Islands, where they have their most usual domicile, excepting the sick and the infirm, all christian clergymen, all lawful school-masters actually employed, all Privy Counsellors, all heads of Departmental *Bureaux*, all members of the Houses of Nobles and Representatives, when in actual session, all Judges and Magistrates, Sheriffs, Registers of public Deeds, Collectors of Customs, poundmasters and civil Constables.

The 18th and 27th articles of the new Constitution imply the existence of a military, and the possibility that the Islands may be involved in war.

There can be no question, therefore, about the sufficiency of the authority for keeping up an armed force both by the Constitution and the laws. It is the usage of all civilized countries whether Empires, Kingdoms, Dukedoms, or Republics, to do so. Even God's Vicar on earth keeps up an army of 17,707 men to protect and defend the lives and properties of his 2,471,000 subjects. Thus it appears that even he does not trust to his influence with the heavenly powers to preserve his temporal authority, by the interposition of a *perpetual miracle*. Is there any nation on earth that does? Yet there are not wanting among us a few zealots who imply that we are such a marvellously good and holy people, that God will fight our battles, and extricate us from all our difficulties. Upon the Almighty we cannot too much rely, whether in peace or war, but if we are to enjoy His favour, we must not be guilty of the presumptuous sin of assuming that it is due to us, on account of our righteousness. In every object that we aspire to, we must use the appointed means, and humbly implore God's blessing upon them, notwithstanding our manifold sins and iniquities. Nehemiah, in building the House of God, did not expect that God would come down, and miraculously protect the workmen; but instituted human agency for that end. He who descended from heaven, with a message of peace, good will, and salvation, was himself, *humanly speaking*, of the lineage of a man of war—yet a man characterized as according to God's own heart; and the forerunner of our Saviour, did not disdain to recognize soldiers, as a class of society, and to advise them *to do violence to no man, neither accuse any falsely, and to be content with their wages*.

Are we in the face of our duty to the King, to prepare the way for a rebellion among his subjects on the ground (which would not be an unreasonable one) that the King cannot protect their lives and properties? Are our planters to be left, on their estates, at the mercy of their Chinese laborers; are we to shut our eyes to the signs of the times, that threaten forcible annexation, and invite free-booters to our shores, by leaving the King's subjects, without arms and without military organization?

Not wishing to neglect any duty lawfully incumbent upon me, in my official position, on the 1st March, I applied to his Royal Highness, Lieutenant General Prince Liholiho for information on certain points

which I thought would well deserve the consideration of the Legislature. I annex copy of the note which I addressed to him, marked No. 1.

The Prince did me the honor of sending me the reply dated 8th March, marked No. 2, which, with its enclosures, marked A.B.C.D.E. I annex for your consideration. If any explanations be wanted, in regard to any detail, I have no doubt, the Prince, if properly applied to, will readily render them.

Most exaggerated accounts have been industriously propagated, about the enormous expense of the military. Yet, it appears that the whole expense for nine months, has been for regular soldiers \$6,885.94

For flags, salutes, &c. &c. 1,553.09

In all \$8,439.03

which for 12 months would be at the rate of \$11,252.04 being vastly less than the expense of any single department of government, except that which the King has placed under my charge.

Referring to the Prince's schedule, marked C; you will see that, in the project which he submits for military organization, illustrated by tables A. B. & C. he would require a sum of \$25,000 annually, besides the yearly pay to be allowed for one Colonel, one Lieutenant Colonel and one Major.

After some consideration of the subject it does not appear to me that less than \$30,000 will suffice to keep up, in due efficiency, the small military force suggested by the Prince, and allow something for the purchase of some cannon and other arms, which are wanted.— There is no use in keeping a number of old rejected, worm-eaten cannon, dangerous to fire, even in a salute, and many of them without shot to fit their calibre.

If the \$50,000 recommended by the Minister of Finance, in his report of 1852, to be raised for the military, by a new tax, could be raised, and kept separate from all other revenues, so as to be applicable, solely, to the military, I do not think it would be too much. What that tax should be, how to collect it, and how to disburse it, will be for the Legislature to consider. Perhaps, a tax imposed and levied on each Island, to support the soldiers on that Island, and to be disbursed there, would be more popular than one to be paid to and disbursed by a central board. Under the former system, the inhabitants of each Island, would have the security that what money they pay, by being spent among themselves, would soon return into their own pockets.— Under the second system, this would be less likely to take place; but the facility of making a great public effort, to suppress rebellion in any one Island, or repel a foreign invasion would be greater. In any military tax, the great *desideratum* would be to combine the certainty of raising a given amount, with the principle of proportioning the burden to the amount of what every man possesses, which gives the measure, *so far as the protection of property is concerned*, of every man's interest in supporting the military. But it is utterly impossible so to apportion a tax on property as to produce a given amount, or even an approxi-

mation to it, without a correct valuation of every man's property throughout the whole kingdom. I do not say that this is impossible, but it would be a most tedious and difficult process.

For the present, the easiest mode of defraying the expenses of the military, would be out of the general revenues of the kingdom from whatsoever source they may be derived. We have no national debt as Great Britain, France, the United States and almost every other nation has. In saying that, under all governments, a FIFTH part of the revenues, after deducting interest on the national debt, is applied to the military forces of the State, I am rather *under* than over the mark. Supposing that the whole revenues of this country, upon an average of future years, should amount to \$250,000, the fifth part, if appropriated to the military, would be exactly \$50,000. Against any such application of money to the military, it may be urged that, such an appropriation would stop all internal improvements. I am very far from being of this opinion, because I believe that, under proper training, the most of our important public works might be done by the military. I gave some memorable examples of this, in my report to the Legislature of 1852. In October 1847, one of the present representatives, George M. Robertson, Esq., and the late John R. Jasper, offered their services gratuitously, to train a body of one hundred men to military discipline. Had their offer been accepted, the men trained and systematically employed, on the public works, under their own officers, guided by a competent engineer, I believe that many of our roads and bridges, since that period, would have been more creditable to the country, and shewn more for the expenditure on them, than they do at present.

That the natives, by proper training, can be made good and effective soldiers, cannot be doubted, without undervaluing the testimony of Lieutenant Cambell, the marine officer of the Right Honorable Lord George Paulet; of Lieutenant Read, Marine officer of Captain Gardner, and of Sir George Simpson, in the instances which he gives, in his published voyage round the world, of the tried bravery of Hawaiian natives in the territories of the honorable Hudson's Bay Company.

But, it may be asked, do civilized governments devote one fifth of their revenues to the support of a military force? I shall meet this question plainly; and shall begin with the example of the United States, which many, born in that country, and who ought to know better, cite as an example of a country great, peaceful and prosperous, with scarcely any military force.

After the peace of 1783, the standing army was reduced to 800 men, in 1790 it was 1200, in 1796, 3000, in 1812, while at war with England, 100,000, in 1821, 6000, and in 1840, 12537. Add to that force about 1,503,952 militia, and we find in the United States a military organization embracing 1,516,489 men, while their population was only 17,069,453, slaves included. This gives nearly 9 armed men for every 100 of the whole population, which, I believe, is a higher proportion, than that found, in any empire or kingdom in the whole world. Were

this kingdom to follow the example of the United States, assuming the whole population to be 75,000, the proportion of armed men should be about 6700.

In the city of New York alone, the regular military force is 5,836 men, consisting of 3,300 infantry, 1,289 cavalry, and 1,241 artillery.

The whole revenue of the United States, in 1840, was \$28,234,512, of which, for the military alone, the appropriation was \$8,750,784, being about one third, and one fifth of a third, of the whole revenue. — Therefore, by the U. States rule, if we have a yearly revenue of \$250,000, we ought to spend about \$97,999 on our armed forces, exclusive of our militia.

I have gone into these details, not because I would recommend that this kingdom should follow the expensive example of the United States, but to show you that that example cannot, with honesty or truth be quoted as one of a "Wise people, who spend nothing on their military, but appropriate a vast deal for public improvements." You will be surprised to hear that, in 1840 (the year on which I found my illustrations) there was not one dollar voted, under the head of public improvements, though I believe the appropriation of \$8,750,784 for the military, included some engineering works, that might be justly called public improvements.

As a safer rule, I would refer you to the table, No 3, which gives the area in square miles, the total population, the population relative to the square mile, the annual revenue in pounds sterling, the public debt in pounds sterling, and the standing army of three small European kingdoms, twelve Duchies and principalities, and four Republics, all, of less extent, than this kingdom, except Württemberg.

You will find that, in the fifteen States under Regal government, the armed force, in place of being about 9 in every 100 of the population, as in the United States, is less than one in .70, and so also in the four Republics, one in .88, and 500 soldiers for the Hawaiian Islands, would be less than either of them, that is only .56, for every hundred of the population.

In Great Britain in 1845, the proportion of public funds applied to military purposes, was £13,961,244. Taking the whole revenue at about £53,000,000, and deducting say, £29,000,000 for interest on the National debt, there remained £24,000,000 for the whole administration of the nation, so that more than one half of it, went to the support of its military forces.

In France, about the same time, the proportion of public funds applied to military purposes was £16,584,000; what it is now, I have no documents to show; neither can I exactly say what are the exact amounts of the revenue, and of the interest on the national debt; but, I believe it will be found that quite as large a proportion of the net yearly revenue, as in Great Britain, is devoted to the support of the military forces.

In Russia the support of an army of about 750,000, and a navy consisting of 50 ships of the line, 25 frigates, 36 steamers, besides briggs

and other small vessels, costs, yearly, about £6,800,000; in Denmark the support of an army of 25000 men, in time of peace, and of a navy of 7 ships of the line, 8 frigates, and 16 smaller vessels, costs, yearly about £457,000; in Sweden and Norway the support of an army of 54,146 men, and a navy of 21 ships of the line, 8 frigates, 6 brigs, 255 small craft, and 117 gun boats, costs, yearly, £578,000; and besides a large proportion of the revenues arising from the estates of the crown is applied in aid of the support of the military.

In all these cases, the proportion of the public revenues applied to military purposes, far exceeds that of one fifth of the whole; and the number of the armed forces kept up, relatively to the whole population, is much greater than what the Prince, modestly, suggests for this Kingdom.

I know of no country where the Government applies money to purposes of public improvement till after fully providing for all its own executive and judicial Departments, and for the military required for the support of its own authority. Yet, I am no enemy to public improvements; on the contrary, I advocate them, when there is a surplus revenue to pay for them, or where money can be borrowed with the certainty that the improvements themselves will amply secure the principal, and provide for the interest.

The force suggested by the King's Lieutenant General in schedule D, is only 240 infantry, to be stationed in the capital, in four series of 60 men each, upon the rotation plan used in Prussia. Of these, only 60 are to be in barracks, at one time; but, besides, he appears to calculate upon 750 volunteers, and 200 militia for Oahu—300 militia for Hawaii—250 for Maui—50 for Kauai, making in all 1,700 men, as per table C, appended to his aforesaid schedule.

This is a very small force, indeed, even relatively to our small population, and to our scanty revenues.

But since the serious sailor riot of November last, new elements of strength have started up, in the loyal feeling, towards the KING, of foreign residents, naturalized foreigners, and sons of foreigners, who, from that feeling as well as a love of order and of peace, with the permission of the Government, enrolled themselves into a Company of Infantry, under the name of the FIRST HAWAIIAN GUARD, and a squadron of Cavalry, under the name of the FIRST HAWAIIAN CAVALRY. Both companies were reviewed along with the native troops, on the King's late birth-day, by Lieutenant General Liholiho, and, considering the brief period of their training, made a most respectable appearance. The Hawaiian Guards contemplate to attach to them a certain number of well trained artillery-men, and to expend, for that purpose, about \$2,000.

I append copies of the by-laws of both companies, marked Nos. 4 and 5, that the principles and objects of these eminently patriotic institutions may be fairly known to the Legislature. I consider it a most favorable omen for the stability of the KING's THRONE, under the new Constitution, that it has been ushered in, with a spontaneous amalgamation of all the elements of which the population is composed,

in ONE feeling of loyal support of His Majesty's authority, of peace and of order.

It appears to me that when we have the means, it would be exceedingly desirable to have a supply of good muskets and bayonets ready for any emergency—say of 3000 stand, at the least. Supposing only 500 good and effective, out of the 884 now on the Islands, 2,500 would remain to be imported. I have reason to know that 2,500 muskets, with bayonets, percussion locks, and cartridge boxes complete, could be supplied, from Birmingham, at a cost not exceeding \$10,000—to which would have to be added freight and insurance to this port. The same number of inferior arms might be procured, in Birmingham, for \$7,500, but, in arms, as in most things else, it is bad economy to prefer cheapness to quality.

Five hundred good cavalry sabres would cost, in the same place, about \$817—one hundred pairs of pistols, for cavalry, with holsters, complete, about \$600—and one hundred lances complete, mounted on shaft and shoes about \$844

Of the 87 pieces of artillery, now on the Islands, I believe very few effective cannon could be selected, for which we have shot to fit, without which, for all purposes of defence, they are absolutely useless.

It might be advisable to import, say twenty-four cannon of heavy calibre, and of three mile range, with a sufficient quantity of shot to correspond, and to place, of these, 12 in a battery on one side of the harbor, as far to seaward as possible, and 12 on the other side, also as far to seaward as possible. We would, then, be able not only to defend our harbor and all the shipping in it, but, in time of war, between foreign nations, to perform our neutral duties effectually, which, under the laws of nations, we are bound to do, though we had not a single Treaty in existence.

It might also be advisable to import a battery of twelve light-field pieces, with all their appointments complete.

In England the price of 24-18 pounder iron fort guns, rammers with sponges, and ladles complete, would be about \$6,660; if, of double the calibre or more, the price, of course, would be proportionally greater.

You will not fail to observe that the Prince strongly recommends that, what funds you may appropriate to the support of the military forces of the Kingdom, should be paid into, and disbursed by a Board of ordnance. Whatever the name of the Board might be, it certainly would be desirable to ensure that that portion of the King's revenues, which may be appropriated to military purposes, should not be diverted, under any circumstances, to any other object.

In his estimate for the military the Prince says nothing of the pay to be assigned to himself, or to General of division, Kamehameha. It will be for the legislature to consider what provision should be made for the support of their princely and military rank.

Our police force throughout the islands is excessive, relatively to the population, when compared with the constabulary force, which is found sufficient in those large cities of Europe, where murders, prostitution,

house-breaking, pocket-picking and drunkenness, are represented as being rise. With a military force organized on the footing suggested by the Prince, perhaps the police force might be reduced to one half of its present number. This, if thought advisable, would be so much money saved, to come in aid of whatever military fund may be provided.

The loyalty of the population towards the king is so great and universal, that, I firmly believe, if the Prince were driven to it (from the absence of all pecuniary provision by the Legislature to support the military,) by appealing, in the King's name to the patriotic feelings of the inhabitants, he could raise several thousands of volunteers, who would arm and equip themselves, at their own expense, and follow him to the field, on any occasion of public danger. Something of this kind existed in the days of *feudalism*, when the militia, was the entire able-bodied population, of which every man bound himself, not only to aid personally, in the defense of the State, in the contingency of a foreign invasion, but held himself provided with arms and equipments suited to his condition; and to parade these, for inspection, before local officers, twice in each year. In the reigns of Henry II and Edward I, of England, such a militia system was compulsory. The arms with which the militia provided themselves, in those days, were each an hauberk, an iron breast plate, a sword and a knife. But our good King Kamehameha III, has abolished feudalism in this Kingdom. He is now a constitutional sovereign, upon the most enlightened principles; and, I have no doubt that, in your wisdom and patriotism, you will devise means to support his authority by an adequate military force upon some plan harmonizing with the system of other civilized nations.

GOD PRESERVE THE KING!

Honolulu, April 9, 1853.

R. C. WYLLIE.

FIRST

ANNUAL REPORT

OF THE

CHIEF JUSTICE

OF THE

SUPREME COURT,

To the Nobles and Representatives of the Hawaiian Islands, in Legislative Council Assembled:

In accordance with my duty under the 93d article of the Constitution, I have the honor to submit to the Legislature a brief report of the Judiciary Department of the Kingdom, for the year 1852, so far as I have been able to obtain the necessary information for this purpose. I must beg your indulgence in the outset, for the hasty, crude and unsatisfactory character of my report, owing partly to the fact that the Constitution did not impose this duty upon me until the 6th day of December, A. D. 1852, and in part to the difficulty of procuring full and suitable returns from the various officers of the islands relative to this important subject. I addressed a circular letter to the several District Attorneys of the islands, requesting that they would furnish me with such statistics and information as they might possess, or be able to gather in their respective islands, with the hope of thereby procuring such a body of useful information as would enable me to lay before you a full, clear and valuable report. This hope has been but partially realized.

HAWAII.

From Francis Funk, Esq., District Attorney of Hawaii, who has been at much pains to collect suitable information and statistics for that island, I have received a valuable report, accompanied with tables, showing the number, nature and location of all offences for the last nine months of the year 1851, and for the first eleven months of 1852. From a comparison of these tables, we obtain the gratifying knowledge that crime has greatly diminished on Hawaii during the year 1852. The whole number of criminal convictions on that island

for the nine months beginning April 1st, and ending December 31st, 1851, was 691, while for the eleven months included between the 1st of January and the 30th of November, 1852, the whole number amounts to only 424, which shows a decrease of fifty and one-third per cent.

The convictions above referred to were as follows:

Offences.	9 months 1851.	11 months 1852.	Decrease.	Increase.
Illicit Cohabitation,	37	12	25	
Adultery and Fornication,	200	140	60	
Sodomy,	39	19	20	
Drunkenness,	69	38	31	
Assault and Battery,	78	31	47	
Larceny,	38	21	17	
Forgery,	14	4	10	
Perjury,	8	3	5	
Common Nuisance,	96	8	88	
Violating the Sabbath,	38	32	6	
Drinking Awa,	23	25		2
Furious Riding,	5	15		10
Idolatry,		7		7
Profanity,	5	8		3
Gambling,	2		2	
Distilling Spiritous Liquor,	1	3		2
Disturbing the quiet of the night,	12	1	11	
All other offences not enumerated,	26	57		31
	691	424	322	55

This report is not quite full, as it does not give the convictions for offences in the Circuit Court, which were from fifteen to twenty in 1851, and not more than from five to ten in 1852.

It appears that nearly one-third of all the convictions for 1851, and over one-half of those for 1852, on the island of Hawaii, were in Hilo, the great sea-port of the island.

Their location is as follows, viz:

District.	No. of convictions, 1851.	No. of convictions, 1852.	Decrease.	Increase.
Hilo, - - - -	207	222		15
Puna, - - - -	96	20	76	
Kau, - - - -	58	21	37	
South Kona, - - - -	91	44	47	
North Kona, - - - -	73	28	45	
South Kohala, - - - -	40	26	14	
North Kohala, - - - -	54	16	38	
Hamakua, - - - -	72	47	25	
Total,	691	424	282	15

MAUI, MOLOKAI, LANAI.

From the report of James W. Austin, Esq., the District Attorney of the District composed of the islands of Maui, Molokai and Lanai,

I am enabled to lay before you the following statistics of crime in those islands.

The whole number of persons prosecuted in 1852 was,	916
" " " " acquitted " "	181
" " " " convicted " "	735
" " Amount of fines imposed	\$9,425 52

The offences for which these fines were imposed were as follows:

Drunkenness,	386
Fornication,	112
Adultery,	98
Assault and Battery,	114
Larceny,	94
Receiving Stolen Goods,	5
Furious Riding,	74
Selling Spirituous Liquors without license,	17
Profanity,	6
Common Nuisance,	3
Aiding Deserters to Escape,	2
Bigamy,	2
Perjury,	2
Felonious Branding,	1
Total,	916

This being the first report and confined to the single year of 1852, we cannot judge of the decrease or increase of crime in the islands it embraces.

Lahaina is the great center of business for the three islands of Maui, Molokai and Lanai, and consequently the number of offences committed in that port greatly exceeds those of all the other districts combined.

"Four-fifths of the offences" says the District Attorney, "are committed within the jurisdiction of the police and district magistrates of Lahaina.

"It may be remarked that in Lahaina, owing to the great number of ships that visit this port, the majority of those who are brought before the courts for drunkenness and other offences are foreigners."

"From the foregoing Schedule it will be seen that, among the offences enumerated, Theft, and Assault and Battery occupy a prominent position, but while very few Hawaiians have been prosecuted for assault and battery, five-sixths of the prosecutions being against foreigners, on the other hand, nine-tenths of the prosecutions for theft have been against Hawaiians, showing the peculiar characteristics in this respect of the foreign and native population."

OAHU.

The report of the District Attorney of Oahu is confined to the single district of Honolulu, and he states that he has endeavored in vain to procure reports from the other parts of the island. Since the filing of his report, I have addressed a circular letter to the respective Judges of the island, from whom I have received returns, which enable me to lay before you a full statement of the criminal offences of this whole field.

I am much indebted to W. C. Parke, Esq., Marshal of the Kingdom, and Henry S. Swinton, Esq., Sheriff of Oahu, for valuable statistical information relating to Honolulu, and to Henry Rhodes, Esq., Clerk of the Supreme Court, for a report of the business in the higher courts for several years past.

The offences for which convictions were had, before the District Justices of Honolulu during the year 1852, are as follows, viz:

Drunkenness,	-	-	-	-	-	659
Fornication,	-	-	-	-	-	228
Adultery,	-	-	-	-	-	95
Assault and Battery,	-	-	-	-	-	49
Furious Riding,	-	-	-	-	-	191
Larceny,	-	-	-	-	-	50
Receiving Stolen Goods,	-	-	-	-	-	5
Gambling,	-	-	-	-	-	12
Common Nuisance,	-	-	-	-	-	5
Selling Liquor without License,	-	-	-	-	-	3
Riotous Conduct, Disturbing the Peace, &c.,	-	-	-	-	-	77
All other offences,	-	-	-	-	-	50
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Total,	-	-	-	-	-	1,424

Of the above named cases, 1,240, were tried before C. C. Harris, Esq., Police Justice of Honolulu, and the remainder before the two native District Justices, J. Kaaukai and J. W. E. Maikai.

Of the 659 persons convicted of drunkenness, 537 were foreigners, and 122 natives, principally sailors.

Of the 228 convicted of Fornication, 124 were foreigners and 104 natives, while of the 95 convicted of Adultery, only 4 were foreigners and 91 natives.

Of the 50 convicted of Larceny, 10 were foreigners and 40 natives.

The amount of fines imposed by the Police and District Justices of Honolulu, during the year 1852, is as follows:

By C. C. Harris, Esq., Police Justice,	-	-	\$8,775	50
By J. Kaaukai, Esq.,	-	-	1,761	00
By J. W. E. Maikai, Esq.,	-	-	630	00
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Total,	-	-	\$11,166	50
Of this amount there has been collected,	-	-	10,292	50
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Balance not collected,	-	-	\$874	50

The Statistics for the other districts of Oahu are as follows:

EWA.			
Offences.		Number.	Fines.
Adultery,	-	37	\$1,110 00
Fornication,	-	3	45 00
Obscene Language,	-	17	170 00
Larceny,	-	4	28 50
Assault and Battery,	-	20	145 00
Disturbing the Peace,	-	16	150 00
Planting Awa,	-	4	40 00
Violating the Sabbath,	-	5	50 00
Fast Riding,	-	1	6 00
Total,		107	\$1,744 50

WAIANAE.			
Offences.		Number.	Fines.
Assault,	-	2	\$21 00
Larceny,*	-	1	40 00
Total,		3	\$61 00

WAIALUA.			
Offences.		Number.	Fines.
Adultery,	.	2	\$ 60
Fornication,	.	2	30
Larceny,	.	18	236
Assault and Battery,	.	4	26
Violating the Sabbath,	.	5	26
Total,		31	\$378

KOOLAU LOA.			
Offences.		Number.	Fines.
Adultery,	.	34	\$1,020
Larceny,	.	3	imprisonment
Assault, and Battery,	.	2	26
Disturbing the Peace,	.	4	20
Violating the Sabbath,	.	2	20
Fast Riding,	.	17	102
Total,		62	\$1,188

KOOLAU POKO.			
Offences.		Number.	Fines.
Adultery,	.	12	\$360
Fornication,	.	2	30
Larceny,	.	1	8
Assault and Battery,	.	3	16
Total,		18	\$414

* Subsequently acquitted on appeal.

Table showing the nature and number of the criminal cases tried in the Superior and Supreme Courts from 1848 to 1852, inclusive.

Offences.	1848	1849	1850	1851	1852	Convictions	Acquittals
Treason, . . .	0	0	0	16	0	0	16
Murder, . . .	0	0	0	0	0	0	0
Manslaughter, . . .	0	0	1	0	2	1	2
Assault and Battery,*	0	2	1	1	3	3	3
Rape, . . .	0	0	1	1	0	0	2
Seduction, . . .	0	0	0	0	0	0	0
Polygamy,†	0	0	0	0	13	10	1
Adultery, . . .	0	0	6	16	0	10	12
Fornication, . . .	0	0	0	0	0	0	0
Cohabitation, . . .	0	0	0	4	0	0	4
Incest, . . .	0	0	0	0	0	0	0
Sodomy, . . .	0	0	0	0	0	0	0
Burglary, . . .	2	0	4	0	0	5	1
Robbery, . . .	0	0	0	0	0	0	0
Larceny, . . .	0	0	21	8	3	18	14
Embezzlement, . . .	0	0	0	2	1	0	3
Gross Cheat, . . .	0	0	0	0	2	0	2
Arson, . . .	0	0	0	0	0	0	0
Smuggling, . . .	0	0	0	1	4	4	1
Perjury, . . .	0	0	0	3	5	4	4
Conspiracy, . . .	0	0	2	2	0	4	0
Forgery, . . .	0	0	2	0	6	5	3
Attempt to Poison, . . .	0	0	1	1	0	0	2
Riot, . . .	0	0	0	0	5	5	
Attempt to scuttle a ship,‡	0	0	0	0	1	0	0
Setting fire to a ship,	0	0	3	0	0	0	3
Other offences, . . .	0	0	3	1	1	2	3
Total,	—	2	45	56	46	71	76

The cases tried in the Circuit Court of Oahu, for the year 1850, 1851 and 1852, are included in the foregoing table.

Table showing the whole number of cases tried in the Superior Court from 1848 to 1852, inclusive.

Nature of cases.	1848.	1849.	1850.	1851.	1852.
Civil Cases, . . .	41	12	49	81	58
Criminal Cases, . . .	2	2	45	51	41
Equity Matters, . . .	3	3	3	9	11
Probate “ . . .	13	37	41	26	37
Bankruptcy, . . .	1	0	0	2	5
Divorce, . . .	0	1	7	157	124
Total,	—	60	55	145	326
					276

* 1 adjourned to Circuit Court,

† 2 not yet tried.

‡ Not yet tried.

Table showing the whole number of convictions for criminal offences on the Island of Oahu during the year 1852.

Offences.	Honolulu.	Ewa.	Waianae.	Waialua.	Keolau Loa.	Koolau Poko.	Whole number.
Manslaughter,	1	0	0	0	0	0	1
Assault & Battery,	51	20	2	4	2	3	82
Drunkenness,	659	0	0	0	0	0	659
Adultery and Fornication,	323	40	0	4	34	14	415
Polygamy,	7	0	0	0	0	0	7
Larceny,	53	4	1	18	3	1	80
Receiving Stolen Goods,	5	0	0	0	0	0	5
Riotous Conduct,	77	16	0	0	4	0	97
Furious Riding,	191	1	0	0	17	0	209
Forgery,	2	0	0	0	0	0	2
Perjury,	2	0	0	0	0	0	2
All other offences,	90	26	0	5	2	0	123
Total,	1461	107	3	31	62	18	1682

KAUAI.

From the report of Godfrey Rhodes, Esq., District Attorney of Kauai, it appears that the whole number of criminal cases tried on that island during the year 1852, so far as ascertained, was 166.

The following table will show the nature of those cases, and also the number of convictions and acquittals.

Offences.	Cases tried.	Convictions.	Acquittals
Fornication and Adultery,	75	55	20
Illicit Cohabitation,	6	0	6
Seduction,	1	0	1
Larceny,	26	18	8
Violating the Sabbath,	5	2	3
Drinking Awa,	13	6	7
Malicious injury,	1	0	1
Assault and Battery,	14	11	3
Demolishing House,	3	3	0
Riot,	3	2	1
Slander,	10	5	5
All other offences,	9	5	4
Total,	166	107	59

The sexes of the persons convicted as near as can be ascertained, are,

Males,	72
Females,	35
Total,	107

The following statement will give you a view of the criminal convictions for the entire group during the year 1852.

Manslaughter,	-	-	-	-	-	1
Drunkenness,	-	-	-	-	-	1,114
Drinking Awa,	-	-	-	-	-	13
Fornication and Adultery,	-	-	-	-	-	730
Illicit Cohabitation,	-	-	-	-	-	12
Polygamy,	-	-	-	-	-	7
Sodomy,	-	-	-	-	-	19
Assault and Battery,	-	-	-	-	-	254
Riot,	-	-	-	-	-	104
Larceny,	-	-	-	-	-	213
Receiving Stolen Goods,	-	-	-	-	-	5
Forgery,	-	-	-	-	-	6
Perjury,	-	-	-	-	-	5
Profanity,	-	-	-	-	-	14
Violating the Sabbath,	-	-	-	-	-	46
Idolatry,	-	-	-	-	-	7
Gambling,	-	-	-	-	-	12
Furious Riding,	-	-	-	-	-	298
Common Nuisance,	-	-	-	-	-	16
Smuggling,	-	-	-	-	-	4
Selling Spirituous Liquors without License,	-	-	-	-	-	20
Distilling Spirituous Liquors,	-	-	-	-	-	3
Gross Cheat,	-	-	-	-	-	2
All other offences,	-	-	-	-	-	43
Total	-	-	-	-	-	2948

The general administration of the laws during the year 1852, has been, so far as I am able to judge, an improvement upon the past, but by no means all we could desire. However, when we consider the past history of the nation, their former vassalage, their ignorance of the new laws, the general tendency of all men in power to make their power felt, we have abundant reason to rejoice that the administration of justice is no worse. We may hope that as the nation advances in knowledge, civilization and good morals, our judges will make a corresponding progress in sound judgment, impartiality and mercy. Of course we cannot expect now, and perhaps never, the same degree of intelligence, integrity and impartiality in our judges that characterize those of England and the United States; but the uprightness, firmness and earnest desire to do their duty, fully and faithfully, manifested by some of our Judges, gives us fair promise of their future progress in the right direction.

It cannot be denied that some of our magistrates are ignorant of the laws, unable to give them a fair construction, hasty, partial, ready to prejudge a case before they have heard half of the testimony, and in conclusion, to sentence without mercy. As a general rule our District Justices even in cases where the fines to be imposed are at their discretion, not exceeding a certain limit, are sure to carry the law to the extreme and inflict upon offenders its severest penalty. This too

is done where they have no self-interest to bias their judgment, no revenge to gratify, and apparently without a reason, unless it be to swell the revenue of the government.

The ignorance of some of the district magistrates and also of the people is made glaringly manifest by the report of the District Attorney of Hawaii. It will be seen by reference to the table of offences punished on that island by District Justices, there were 39 cases of Sodomy in 1851, and 19 in 1852. Now it is well known by every one who takes the trouble to read the law, that the heinous offence of Sodomy is entirely beyond the jurisdiction of District Justices, and can only be tried by a jury. It follows then, that the District Justices of Hawaii have punished 58 persons for one of the grossest offences known to the law, without the shadow of power, and what is stranger still, the persons punished have quietly sat down under such unrighteous judgments without even lifting their voices for an appeal. Again, 41 of these cases have happened in Hilo, the great sea port and centre of civilization for the island, and 12 in north Kona, the residence of the Governor.

The same remarks, to a certain extent, are applicable to the offences of perjury, forgery, slander and idolatry, for all of which, our puissant District Justices have tried and condemned persons without the least right. Indeed, idolatry is not an offence known to the law. To remedy such evils for the future, there should be a more careful selection of Justices; the laws of the land should be taught in our highest seminaries; and it should be made the duty of some intelligent men, the several District Attorneys if you please, to visit each District Justice at least once in every year; look over his record, and instruct him in his duties. I hope in the course of the present year to prepare a brief treatise on the powers and duties of District Justices, with an appendix of forms necessary for their use, and trust that its publication may do something towards their enlightenment.

But after all we have said, it is our duty to add, the universal remark, that in no part of the world is life and property more safe than in these islands. Murders, robberies and the higher class of felonies are quite unknown here, and in city and country we retire to our sleep conscious of the most entire security. The stranger may travel from one end of the group to the other, over mountains and through woods, sleeping in grass huts, unarmed, alone and unprotected, with any amount of treasure on his person, and with a tithe of the vigilance required in older and more civilized countries, go unrobbed of a penny, and unharmed in a hair. Where does the world afford a parallel of equal security?

The great sins of the land are drunkenness, adultery, fornication and petty thieving, and at the bottom of all lies *indolence*. The first of these offences, intemperance, is confined almost exclusively to the ports of Honolulu and Lahaina, and nearly all the cases brought before the police courts are those of sailors belonging to ships which visit us in the fall and spring. What new step, if any, can be taken

for the suppression of this evil, that would commend itself to the community as wise and practicable, I am not prepared to say. I know of none better than a strict enforcement of the stringent laws now in existence.

But the monster evil of the land—the one which goes to the vitals of this nation is licentiousness. This subject is not a pleasant one, but when we are daily called upon to witness the most disgusting indecencies in our public streets—common prostitution stalking abroad at noon-day—and the nation speedily wasting away under our very eyes with its consuming fires, it is criminal to keep silence! It is a solemn truth, that ought to be *uttered and felt*, that all hope of preserving the Hawaiian race is but an empty shadow, unless we can work some speedy reform.

One thing is clear, namely, that the present system of fines does not much diminish the evil, and some other means should be tried. I have no faith in heavier penalties as means of repressing this hydra-headed sin; for public opinion will not sustain them, and where laws enacted for the preservation of good morals go far in advance of the general voice of the nation, they fail to command respect, and defeat their own object. I would not be understood as entertaining the idea prevalent among some, that all penal enactments erected as barriers to this vice should be swept away, leaving us to resort to *moral* means alone for its correction; for I believe our existing laws, on the whole, exercise a healthy and restraining influence. If they do not much diminish the evil, they go far to keep it within its old lines and prevent its increase. It has been much discussed in this and other countries whether adultery and its kindred offences should be brought under the penal arm of the law, and punished as offences against public morality, or left to the operation of civil laws and the frown of public opinion. What may be wise in other countries I do not pretend to decide, but I have no hesitation in saying, that I think the punishment of such offenses with penalties is wise in this country.—Why an offence which destroys the happiness of families, poisons every channel of life and health in the nation, and is blighting every hope of its existence, should go unpunished, is not easy for me to perceive.

The great hot beds of this vice are Honolulu and Lahaina, and it has been suggested by one of the House of Nobles, that a law preventing the young females of other districts from visiting these places would have a great effect in checking the evil. If a law of that kind could be devised, which would be *practicable* and not interfere too much with the freedom of the subject, it would be beneficial beyond question. But I do not think such a law can be framed. The suggestion however, is worthy of serious consideration.

Another remedy suggested is a change in the mode of punishment. It is thought by some that the tread-mill, with the mortification, degradation and hard work attached to it, might be successfully used as an engine of punishment for adultery in the place of fines, while others object to it as a useless waste of human power that can work

no reform. Others again recommend imprisonment instead of fines, but until we have better prisons and a better prison discipline, such a punishment would amount to nothing at all.

In my opinion, licentiousness is so deeply planted in the heart of this nation; the cancer is so firmly imbedded in, and has spread its roots so entirely throughout the body politic, that no skill of the legislator can cure it, and it must eventually destroy the nation. But though it cannot be eradicated, I think it may be checked by the direct and indirect operation of the laws. The main cause of this and the most other vices in this people is indolence. Promote industry then, by selling the people lands at low prices—by protecting them in their kuleanas—by providing for the enforcement of our vagrant laws—by keeping the people at home, if possible, and you will promote virtue, and perchance infuse new blood into the veins of this dying people.

The law should have a direct action also in striking at some of the more visible sources of this evil, now existing in our midst. It is said that there are many in our metropolis who maintain themselves by the infamous agency of ministering to the vices of others, and if so, they should be brought to the bar of justice promptly, and punished severely. The pimp and the brothel keeper are greater offenders than the adulterer.

Another source of this evil is said to be the Public Dance Halls of our city. If half we hear of them is true, they are the worst kind of common nuisances, and as such should be suppressed without delay. The language of the Marshal of the Kingdom and the Sheriff of Oahu on this subject, is as follows: "We would distinctly say, that the Public Dance Halls in Honolulu, are the principal sources, and in fact the primary cause of the vast amount of fornication and adultery that have disgraced this city this last season; and that unless stringent measures are adopted, and that shortly, for the suppression of such hot-beds of vice, or, if that cannot be accomplished, for their better regulation, then the young and rising generation of Hawaiians, from whom so much is expected, and for whom so much has been done, must irretrievably fall, and be consigned to infamy and shame."

Our present statute against Common Nuisances is sufficiently broad in my opinion to reach these Public Dance Houses. The offence of Common Nuisance is defined to be, "the endangering of the public personal safety or health, or doing, causing, or promoting, maintaining or continuing what is offensive, or annoying and vexatious, or plainly hurtful to the public, or is a *public outrage against common decency or common morality, or tends plainly and directly to the corruption of the morals, honesty and good habits of the people*, the same being without authority or jurisdiction by law." But as there is a doubt on the subject in the minds of the bar, it may be well for the Legislature to remove that doubt.

A subject intimately connected with the present, and to which I beg to call your attention, is that of Divorces. By reference to the table of civil cases tried in the Superior Court, you will find that in 1851,

there were 157, and in 1852, 124 cases of divorce. All of these cases have been heard before me at my chambers, and my heart has been sickened at the accumulated evidence against unfaithful wives and husbands. More than half of the applications have been made on the ground of wilful desertion of husbands who have gone to California or to parts unknown, and of wives who have abandoned their homes for the various sea-ports, and refused to return. In this class of cases no adultery could be proved, and the result has been, that out of 381 cases heard before me within the last two years, I have granted but 81 divorces. It is a serious question for the Legislature to determine, whether the granting of divorces ought to be confined to the single cause of adultery, or extended to other causes, such as impotence, wilful desertion without good reason for four years, absence in a foreign country for four years unheard of, and imprisonment for a crime for a period exceeding four years, when the application for a divorce is made pending the imprisonment.

By the common law of the kingdom, either party might renounce the marriage union at pleasure, and this freedom of voluntary divorce continued until the time of Kaahumanu, when she proclaimed the following law:

"A man cannot cast off his wife at pleasure."

"A woman cannot cast off her husband at pleasure."

Thus the law continued until the year 1840, when the several Governors were empowered to grant divorces for four years absence unheard of, banishment to another island for a period of four years or more, adultery, and an attempt by either party to destroy the other's life. This law continued in force until 1846, when it was enacted that the Governors shall have power to decree annulments of the marriage contract for the cause of adultery only. But the statute of 1846 has not been fully understood or acted upon, a great number of divorces having been granted for causes other than adultery; and until within the last year, if not up to the present day, the Governors have been guided by the law of 1840.

It may be said that any new facilities granted for the obtaining of divorces will only tend to inflame every trifling dispute between husbands and wives, and thus loosen the marriage tie. But on the other hand, it is cruel to be compelled to say to a party who has been wilfully and maliciously abandoned by a husband or wife, the law affords you no remedy. The almost invariable result of such an answer is, that one or both parties fly to adultery.

But whether the causes for which divorce may be granted are extended or not, the power of granting them should be confined to fewer hands. It has sometimes happened that after a Judge of the Supreme Court has heard an application for a divorce and refused it, the same parties have applied to a Governor and obtained one. There has been great complaint made also, that divorces have been granted by some of the Governors on an *ex parte* hearing, without the least notice to the party complained of.

Another evil to which I invite your attention, is the multiplication of laws on the same subject, without any express repeal of former stat-

utes. There has been such an enacting, amending, and accumulating of laws for the last ten years, relating to the same matters, that our legislation in some of its branches has become a perfect patch-work, which confuses the people, the magistrates, and I trust I shall not be thought guilty of disrespect, when I add, the Representatives themselves. It is of little use to say to a district justice, that such and such a law is repealed by implication; for his education has been under the ancient statutes, and he recognizes no repeal that is not plainly expressed in words. The necessity of an express repeal of such statutes as are really not in force, or about the force of which doubts are entertained, has been made manifest in the case of divorces above mentioned. More glaring instances of the same kind might be mentioned, but such an enumeration would be only wasting your time, as they cannot have failed to come within your own knowledge. The perplexity and confusion prevailing on this subject, will be remedied in some measure, I hope, by the Civil Code, now in the course of preparation; but I would recommend the immediate repeal of Chapters one, two, three, four, six, seven, eight, nine, ten, fifteen, sixteen, seventeen, eighteen, nineteen, twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, forty-three, forty-four, forty-five, forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two, fifty-three, fifty-four and fifty-five of the Old Laws, most, if not all of which statutes have been impliedly repealed by subsequent enactments, though still believed by many of the native magistrates and people to be in force.

I would also recommend a repeal of so much of the first section of the fifty-third chapter of the Penal Code as confers upon Police and District Justices, the Jurisdiction over Larceny in the second degree; for it enables them to try a man without a jury in such cases, and sentence him to imprisonment for a term not exceeding five years. I was opposed to the granting of that power at the time of enacting the Penal Code, and I have reason to believe that that opposition was well grounded. It is too great a power to confer upon any single man, the authority to determine the fact, apply the law, and dispose at will of the liberty of his fellow-subject for five years, and in my opinion cases of such magnitude should be tried by a jury. But it is asked, why alter the law? The accused has the right of appealing to a jury if he does not like the decision of the justice, and therefore no wrong is done him. This argument is plausible but not sound. The ignorance of many natives of their rights—their confusion on such occasions—the want of means and friends in many instances to assist in taking an appeal, would often lead them to submit to an unjust sentence; and thus defeat the great end in view—a fair and impartial trial.

Again, it is said the native jurors at least are not qualified to discharge their duties. I am of a different opinion; for though they may sometimes shoot wide of the truth, yet I believe they are, as a general rule, better qualified to weigh and determine the facts of the case, where the testimony is in the native language, than a jury of for-

eigners. They understand every word, look and gesture of the witness—they know the habits, character, and peculiarities of their own race better than any foreign judge, and hence their verdict, on questions of fact, is to be preferred in important cases to the judgment of the bench.

Moreover, the system of trial by jury ought to be encouraged, as a school to the natives, wherein they may learn the laws of the land, and be taught the necessity of yielding them implicit obedience. As a means of promoting useful information among the people, I consider this mode of trial of no trifling importance.

I should not feel that I had done my whole duty, did I fail to call to the mind of the Legislature the notorious defects in our prison discipline. The law of 1851, providing a new system has remained a dead letter, except on the single island of Kauai, for the want of money and men to carry it into operation; and the result is, that the old system, which is that of no discipline at all, still continues. Most of our offences are punished by imprisonment, but unless we have suitable prisons and better discipline it will be of little avail to sentence prisoners. Our present jails with one or two exceptions, are little better than pest-houses and schools of vice.

Aware that I may have omitted the mention of many things connected with this subject, which will suggest themselves to your minds as important; and again craving your indulgence for the imperfect manner in which I have discharged the duty imposed on me, I respectfully submit this report.

WILLIAM L. LEE.

